

**PG&E Topock Compressor Site**  
CERCLA Concurrence in DOI Consent Decree

CONCUR BELOW (initial and date)	Memo from staff to DD	Memo from DD to OSRE	Letter from DD to OSRE	Draft Consent Decree copy	Press Release	Weekly Report Item
Staff Attorney	sign memo <i>JS</i>	c	x	c	N/A	x
ORC Section Chief	c <i>R</i>	c <i>TZ</i>	c <i>TZ</i>	c <i>T</i>		c <i>TZ</i>
ORC Branch Chief	c <i>DM</i>	c <i>DM</i>	c <i>DM</i>	c		
Regional Counsel	sign memo <i>Rcen</i>	sign memo <i>Rcen</i>	c	c		
Superfund RPM	sign memo <i>SPM</i>	c	c	c		x
Superfund Section Chief	c <i>PS</i>	c	c	c		
Superfund Branch Chief	c <i>KS</i>	c <i>KS</i>	c <i>KS</i>	c <i>KS</i>		
Superfund Division Director	<i>DM</i>	sign memo	sign letter	c		

AFTER SIGNATURE PLEASE RETURN TO: Joshua Wirtschafter (ORC-3) 2-3912  
x=responsibility for preparing the document; c=initial to reflect concurrence

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16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA  
18 (Eastern Division - Riverside)  
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16 UNITED STATES OF AMERICA :

17  
18 Plaintiff, :

19 v. :

Civil No.

20  
21 PACIFIC GAS & ELECTRIC COMPANY, :

22 Defendant. :  
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26 **REMEDIAL DESIGN / REMEDIAL ACTION CONSENT DECREE**

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## I. BACKGROUND

A. The United States of America ("United States"), on behalf of the United States Department of the Interior ("DOI"), Bureau of Land Management ("BLM"), Fish and Wildlife Service ("FWS"), and Bureau of Reclamation ("BOR") (collectively the "Federal Agencies"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by the Federal Agencies and the Department of Justice for response actions associated with the Pacific Gas & Electric Company Compressor Station ("Compressor Station"), a facility that is located approximately 15 miles southeast of Needles, California, together with accrued interest; and (2) performance by Pacific Gas & Electric Company ("PG&E" or "Settling Defendant") of response actions at the Site consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), DOI notified the State of California (the "State"), through the Department of Toxic Substances Control ("DTSC"), on April 27, 2011, of negotiations with PG&E regarding the implementation of remedial design and remedial action for the Site, and DOI has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree. The State is proceeding under state law and federally delegated Resource Conservation and Recovery Act ("RCRA") authority, and in accordance with a Corrective Action Consent Agreement ("CACA"), which DTSC entered into with PG&E on February 26, 1996.

D. In accordance with Section 122(j)(1) of CERCLA, 42

1 U.S.C. § 9622(j)(1), DOI notified the authorized official for the Federal Natural  
2 Resource Trustees on September 22, 2011, of negotiations with PG&E regarding  
3 the release of hazardous substances that may have resulted in injury to the natural  
4 resources under federal trusteeship and invited the Federal Trustees to participate  
5 in the negotiation of this Consent Decree.

6 E. PG&E does not admit any liability arising out of the transactions or  
7 occurrences alleged in the complaint, nor does it acknowledge that the release or  
8 threatened release of hazardous substances at or from the Compressor Station  
9 constitutes an imminent and substantial endangerment to the public health or  
10 welfare or the environment.

11 F. In response to a release or a substantial threat of a release of a  
12 hazardous substance at or from the Compressor Station, Settling Defendant  
13 commenced in 1996 a Remedial Facility Investigation ("RFI") and Corrective  
14 Measures Study ("CMS"), pursuant to the CACA with DTSC. In July 2005,  
15 Settling Defendant entered into an Administrative Consent Agreement ("Consent  
16 Agreement") with the Federal Agencies to perform a Remedial Investigation  
17 ("RI") and Feasibility Study ("FS") pursuant to 40 C.F.R. § 300.430. Pursuant to  
18 the terms of the Consent Agreement, the Federal Agencies agreed to coordinate the  
19 activities required by the Consent Agreement with those required by the CACA,  
20 and authorized PG&E to combine investigations and reports in the development of  
21 an integrated RFI/RI and CMS/FS that fulfilled the requirements of both State and  
22 Federal law.

23 G. Subsequent to entering the Consent Agreement, Settling Defendant  
24 and the Federal Agencies agreed to bifurcate the RI and the FS based on  
25 environmental media. The initial RI/FS addressed the investigation of  
26 contamination and evaluation of remedial alternatives related to groundwater.  
27 PG&E completed and the Federal Agencies approved "RI Volume 1 Site  
28 Background" on August 10, 2007, the "Revised RI Volume II Hydrological

1 Characterization and Results of Groundwater and Surface Water Investigation” on  
2 February 11, 2009, and a groundwater FS on December 16, 2009. The activities  
3 PG&E is required to perform pursuant to this Consent Decree are related to  
4 remedial action addressing contaminated groundwater. The terms of the Consent  
5 Agreement remain in effect for response actions associated with releases of  
6 hazardous substances at or from the Compressor Station other than the remedial  
7 action addressing contaminated groundwater. A second RI/FS that addresses  
8 contaminated soils will be completed pursuant to the Consent Agreement, and the  
9 final remedy for soil will be addressed pursuant to a future consent decree.

10 H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, DOI  
11 published notice of the completion of the groundwater FS and issuance of the  
12 Proposed Plan for remedial action on June 4, 2010, in a major local newspaper of  
13 general circulation. DOI provided an opportunity for written and oral comments  
14 from the public on the Proposed Plan for remedial action. A copy of the transcripts  
15 of the public meetings held to solicit public comments is available as part of the  
16 administrative record upon which the Federal Agencies based the selection of the  
17 response action.

18 I. Pursuant to Section 106 of the National Historic Preservation Act  
19 (“NHPA”), 16 U.S.C. § 470f, and the United States’ trust responsibilities to Native  
20 American tribes, in 2008, BLM initiated consultation with the nine Native  
21 American tribes, the Advisory Council on Historic Preservation (“Advisory  
22 Council”), the California State Historic Preservation Office, the Arizona State  
23 Historic Preservation Office, and PG&E to develop a Programmatic Agreement for  
24 the proposed remedial action. From February 5, 2009 through March 20, 2009, the  
25 Federal Agencies formally consulted with the nine tribes on the CMS/FS, with  
26 written comments provided to DTSC and DOI. The Federal Agencies, through  
27 BLM, then held in-person consultation from April 27, 2009 through May 4, 2009  
28 with the Hualapai, Chemehuevi, FMIT and CRIT. From March 11, 2010 through

1 July 19, 2010, the Federal Agencies, through the BLM, formally consulted with the  
2 nine tribes concerning DOI's Proposed Plan for undertaking remedial action to  
3 clean up contaminated groundwater at the Site. In October, 2010, BLM, on behalf  
4 of the Federal Agencies and following consultation with the nine tribes, executed a  
5 Programmatic Agreement with the California State Historic Preservation Officer,  
6 the Arizona State Historic Preservation Officer, and the Advisory Council  
7 identifying the stipulations and other measures to be undertaken in the design and  
8 implementation of Site remedial action to satisfy the substantive requirements of  
9 Section 106 of the NHPA, 16 U.S.C. § 470f. Certain measures contained in the PA  
10 to protect cultural and historic properties are unrelated to the CERCLA cleanup or  
11 otherwise exceed what is required of the Selected Remedy to satisfy applicable or  
12 relevant and appropriate requirements ("ARARs").

13 J. The decision by DOI selecting the Remedial Action to be  
14 implemented is embodied in a Record of Decision ("ROD"), executed on January  
15 20, 2011, on which the State had a reasonable opportunity to review and comment.  
16 The ROD includes a responsiveness summary to the public comments. Notice of  
17 the selection of Remedial Action was published in accordance with Section 117(b)  
18 of CERCLA, 42 U.S.C. § 9617(b). DTSC also selected a groundwater remedy for  
19 the Topock Site, which is embodied in a Statement of Decision and Resolution of  
20 Approval for the PG&E Topock Compressor Station Groundwater Remediation  
21 Project, executed by DTSC on January 31, 2011. To the extent practicable, the  
22 Parties will use best efforts to coordinate the activities required by this Consent  
23 Decree with those required by the CACA, the Statement of Decision executed by  
24 DTSC, and the Topock Remediation Detailed Project Schedule ("Rainbow  
25 Schedule"). The Parties agree to attempt expeditiously to resolve disagreements  
26 concerning implementation of the Remedial Action informally with DTSC. To  
27 further facilitate coordination among the governmental entities, DOI and DTSC  
28 entered into a Memorandum of Understanding concerning Coordination in



1 Overseeing Implementation of Groundwater Response Actions at the Topock Site  
2 (“DOI/DTSC MOU”).

3 K. Based on the information presently available to DOI, DOI believes  
4 that the Work will be properly and promptly conducted by Settling Defendant if  
5 conducted in accordance with the requirements of this Consent Decree and its  
6 appendices.

7 L. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C.  
8 § 9613(j), the Remedial Action set forth in the ROD and the Work to be performed  
9 by Settling Defendant shall constitute a response action taken or ordered by the  
10 President for which judicial review shall be limited to the administrative record.

11 M. PG&E contends that the Compressor Station is an operational facility  
12 necessary for approximately 36% of PG&E’s normal delivery of natural gas to  
13 Northern and Central California to millions of people, and is regulated by the  
14 California Public Utilities Commission and the U.S. Department of Transportation.  
15 Based on the information presently available to DOI, DOI believes that Settling  
16 Defendant may continue its normal operations at the Compressor Station while  
17 performing the Work pursuant to this Consent Decree without posing an  
18 unacceptable risk to human health or the environment due to exposure to Waste  
19 Materials or interfering with or adversely affecting the implementation, integrity,  
20 or protectiveness of the Remedial Action.

21 N. The Parties recognize, and the Court by entering this Consent Decree  
22 finds, that this Consent Decree has been negotiated by the Parties in good faith and  
23 implementation of this Consent Decree will expedite the cleanup of the Site and  
24 will avoid prolonged and complicated litigation between the Parties, and that this  
25 Consent Decree is fair, reasonable, and in the public interest.

26 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## 27 II. JURISDICTION

28 1. This Court has jurisdiction over the subject matter of this action

1 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and  
2 9613(b). This Court also has personal jurisdiction over Settling Defendant. Solely  
3 for the purposes of this Consent Decree and the underlying complaint, Settling  
4 Defendant waives all objections and defenses that it may have to jurisdiction of the  
5 Court or to venue in this District. Settling Defendant shall not challenge the terms  
6 of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent  
7 Decree.

### 8 **III. PARTIES BOUND**

9 2. This Consent Decree applies to and is binding upon the United States  
10 and upon Settling Defendant and its successors and assigns. Any change in  
11 ownership or corporate status of Settling Defendant including, but not limited to,  
12 any transfer of assets or real or personal property, shall in no way alter Settling  
13 Defendant's responsibilities under this Consent Decree.

14 3. Settling Defendant shall provide a copy of this Consent Decree to  
15 each contractor hired to perform the Work required by this Consent Decree and to  
16 each person representing Settling Defendant with respect to the Site or the Work,  
17 and shall condition all contracts entered into hereunder upon performance of the  
18 Work in conformity with the terms of this Consent Decree. Settling Defendant or  
19 its contractors shall provide written notice of the Consent Decree to all  
20 subcontractors hired to perform any portion of the Work required by this Consent  
21 Decree. Settling Defendant shall nonetheless be responsible for ensuring that its  
22 contractors and subcontractors perform the Work in accordance with the terms of  
23 this Consent Decree. With regard to the activities undertaken pursuant to this  
24 Consent Decree, each contractor and subcontractor shall be deemed to be in a  
25 contractual relationship with Settling Defendant within the meaning of Section  
26 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

### 27 **IV. DEFINITIONS**

28 4. Unless otherwise expressly provided in this Consent Decree, terms

1 used in this Consent Decree that are defined in CERCLA or in regulations  
2 promulgated under CERCLA shall have the meaning assigned to them in CERCLA  
3 or in such regulations. Whenever terms listed below are used in this Consent  
4 Decree or in the appendices attached hereto and incorporated hereunder, the  
5 following definitions shall apply solely for purposes of this Consent Decree:

6 "CACA" shall mean the Corrective Action Consent Agreement entered into  
7 between Settling Defendant and DTSC with respect to the Compressor Station, on  
8 February 26, 1996.

9 "CERCLA" shall mean the Comprehensive Environmental Response,  
10 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

11 "Consent Agreement" shall mean the Administrative Consent Agreement  
12 between Settling Defendant and the Federal Agencies entered in July, 2005, and  
13 any amendments thereto.

14 "Consent Decree" or "Decree" shall mean this Consent Decree and all  
15 appendices attached hereto (listed in Section XXVIII). In the event of conflict  
16 between this Consent Decree and any appendix, this Consent Decree shall control.

17 "Day" shall mean a calendar day unless expressly stated to be a working  
18 day. The term "working day" shall mean a day other than a Saturday, Sunday, or  
19 federal holiday. In computing any period of time under this Consent Decree,  
20 where the last day would fall on a Saturday, Sunday, or federal holiday, the period  
21 shall run until the close of business of the next working day.

22 "Effective Date" shall be the date upon which this Consent Decree is entered  
23 by the Court as recorded on the Court docket, or, if the Court instead issues an  
24 order approving the Consent Decree, the date such order is recorded on the Court  
25 docket.

26 "DOI" shall mean the United States Department of the Interior and any  
27 successor departments or agencies of the United States.

28 "DTSC" shall mean the California Department of Toxic Substances Control

1 and any successor departments or agencies of the State.

2 "Federal Agencies" shall mean the United States Department of the Interior,  
3 Bureau of Land Management, United States Fish and Wildlife Service, and Bureau  
4 of Reclamation.

5 "Institutional Controls" shall mean federal, state, or local laws, regulations,  
6 ordinances, zoning restrictions, land use management plans, or other governmental  
7 controls or notices that: (a) limit land, water, and/or resource use to minimize the  
8 potential for human exposure to Waste Materials at the Site; (b) limit land, water,  
9 and/or resource use to implement, ensure non-interference with, or ensure the  
10 protectiveness of the Remedial Action; and/or (c) provide information intended to  
11 modify or guide human behavior at the Site.

12 "Interest" shall mean interest at the rate specified for interest on investments  
13 of the Hazardous Substance Superfund established by 26 U.S.C. § 9507,  
14 compounded annually on October 1 of each year, in accordance with 42 U.S.C.  
15 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the  
16 interest accrues. The rate of interest is subject to change on October 1 of each  
17 year.

18 "National Contingency Plan" or "NCP" shall mean the National Oil and  
19 Hazardous Substances Pollution Contingency Plan promulgated pursuant to  
20 Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and  
21 any amendments thereto.

22 "Operation and Maintenance" or "O&M" shall mean all activities required  
23 to maintain the effectiveness of the Remedial Action as required under the  
24 Operation and Maintenance Plan approved or developed by DOI pursuant to  
25 Section VI (Performance of the Work by Settling Defendant) and the SOW.

26 "Paragraph" shall mean a portion of this Consent Decree identified by an  
27 Arabic numeral or an upper or lower case letter.

28 "Parties" shall mean the United States and Settling Defendant.

1       “Performance Standards” shall mean the cleanup standards and other  
2 measures of achievement of the goals of the Remedial Action, including Remedial  
3 Action Objectives set forth in Section II.H. of the ROD, attainment of ARARs, and  
4 any modified standards established pursuant to this Consent Decree.

5       “Plaintiff” shall mean the United States.

6       “Rainbow Schedule” shall mean the Topock Remediation Detailed Project  
7 Schedule for investigation and remedial activities at the Site.

8       “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.  
9 §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

10       “Record of Decision” or “ROD” shall mean the Record of Decision relating  
11 to the Site issued by DOI on January 20, 2011, and all attachments thereto. The  
12 ROD is attached as Appendix A.

13       “Remedial Action” shall mean all activities Settling Defendant is required  
14 to perform under the Consent Decree to implement the ROD, in accordance with  
15 the SOW, the final Remedial Design and Remedial Action Work Plans, and other  
16 plans approved by DOI, including implementation of Institutional Controls, until  
17 the Performance Standards are met, and excluding performance of the Remedial  
18 Design, O&M, and the activities required under Section XXV (Retention of  
19 Records).

20       “Remedial Action Work Plan” shall mean the document developed pursuant  
21 to Paragraph 13 and approved by DOI, and any modifications thereto.

22       “Remedial Design” shall mean those activities to be undertaken by Settling  
23 Defendant to develop the final plans and specifications for the Remedial Action  
24 pursuant to the Remedial Design Work Plan.

25       “Remedial Design Work Plan” shall mean the final document developed  
26 pursuant to Paragraph 12 and approved by DOI, and any modifications thereto.

27       “Response Costs” shall mean all costs, including, but not limited to, direct  
28 and indirect costs, that the Federal Agencies and Department of Justice incur in

1 reviewing or developing plans, reports, and other deliverables submitted pursuant  
2 to this Consent Decree or the Consent Agreement, in overseeing implementation of  
3 the Work, or otherwise implementing, overseeing, or enforcing this Consent  
4 Decree or the Consent Agreement, including, but not limited to, payroll costs,  
5 contractor costs, travel costs, laboratory costs, the costs incurred pursuant to  
6 Paragraph 10 (Notice to Successors-in-Title), Sections VII (Remedy Review),  
7 IX (Access and Institutional Controls) (including, but not limited to, the cost of  
8 attorney time and any monies paid to secure access and/or to secure, implement,  
9 monitor, maintain, or enforce Institutional Controls including, but not limited to,  
10 the amount of just compensation), XV (Emergency Response), Paragraph 49  
11 (Funding for Work Takeover), and Section XXIX (Community Relations).

12 "Section" shall mean a portion of this Consent Decree identified by a Roman  
13 numeral.

14 "Selected Remedy" shall mean the remedial action alternative selected in the  
15 ROD.

16 "Settling Defendant" shall mean Pacific Gas & Electric Company.

17 "Site" shall mean the area subject to, or necessary to implement the,  
18 Remedial Action, depicted generally on the map attached as Appendix B.

19 "State" shall mean the State of California.

20 "Statement of Work" or "SOW" shall mean the statement of work for  
21 implementation of the Remedial Design, Remedial Action and O&M at the Site, as  
22 set forth in Appendix C to this Consent Decree and any modifications made in  
23 accordance with this Consent Decree.

24 "Supervising Contractor" shall mean the principal contractor retained by  
25 Settling Defendant to supervise and direct the implementation of the Work under  
26 this Consent Decree.

27 "Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a  
28 security interest in, or where used as a noun, a sale, assignment, conveyance, or

1 other disposition of any interest by operation of law or otherwise.

2 "United States" shall mean the United States of America and each  
3 department, agency and instrumentality of the United States.

4 "Waste Material" shall mean: (1) any "hazardous substance" under Section  
5 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant  
6 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste"  
7 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous  
8 waste" under California Health and Safety Code Section 25117.

9 "Work" shall mean all activities and obligations Settling Defendant is  
10 required to perform under this Consent Decree, except the activities required under  
11 Section XXV (Retention of Records).

## 12 V. GENERAL PROVISIONS

13 5. Objectives of the Parties. The objectives of the Parties in entering  
14 into this Consent Decree are to protect public health or welfare or the environment  
15 by the design and implementation of the Remedial Action at the Site by Settling  
16 Defendant, to pay Response Costs of the Plaintiff, and to resolve the claims of the  
17 Federal Agencies against Settling Defendant as provided in this Consent Decree.  
18 Upon Court approval of this Consent Decree, the Federal Agencies agree that all  
19 activities required under the Consent Agreement with respect to addressing  
20 contaminated groundwater have been performed to the Federal Agencies'  
21 satisfaction. Settling Defendant shall continue to comply with the terms of the  
22 Consent Agreement in undertaking response actions other than the Remedial  
23 Action.

24 6. Commitments by Settling Defendant. Settling Defendant shall  
25 finance and perform the Work in accordance with this Consent Decree, the ROD,  
26 the SOW, and all work plans and other plans, standards, specifications, and  
27 schedules set forth in this Consent Decree or developed by Settling Defendant and  
28 approved by DOI pursuant to this Consent Decree. Settling Defendant shall pay

1 the United States for Response Costs as provided in this Consent Decree.

2 7. Compliance With Applicable Law. All activities undertaken by  
3 Settling Defendant pursuant to this Consent Decree shall be performed in  
4 accordance with the requirements of all applicable federal and state laws and  
5 regulations. Settling Defendant must also comply with all applicable or relevant  
6 and appropriate requirements of all federal and state environmental laws as set  
7 forth in the ROD and the SOW. The activities conducted pursuant to this Consent  
8 Decree, if approved by DOI, shall be deemed to be consistent with the NCP.

9 8. Intentionally blank.

10 9. Permits.

11 a. As provided in Section 121(e) of CERCLA, 42 U.S.C.  
12 § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any  
13 portion of the Work conducted entirely on-site. Where any portion of the Work  
14 that is not on-site requires a federal or state permit or approval, Settling Defendant  
15 shall submit timely and complete applications and take all other actions necessary  
16 to obtain all such permits or approvals.

17 b. Settling Defendant may seek relief under the provisions of  
18 Section XVIII (Force Majeure) for any delay in the performance of the Work  
19 resulting from a failure to obtain, or a delay in obtaining, any permit or approval  
20 referenced in Paragraph 9.a and required for the Work, provided that it has  
21 submitted timely and complete applications and taken all other actions necessary to  
22 obtain all such permits or approvals.

23 c. This Consent Decree is not, and shall not be construed to be, a  
24 permit issued pursuant to any federal or state statute or regulation.

25 10. Notice to Successors-in-Title and Transfers of Real Property

26 a. For any real property owned or controlled by Settling  
27 Defendant located at the Site, Settling Defendant shall, within 30 days after the  
28 Effective Date, submit to DOI for review and approval a proposed notice to be



1 filed with the appropriate land records office that provides a description of the real  
2 property and provides notice to all successors-in-title that the real property is part  
3 of the Site, that DOI has selected a remedy for the Site, and that Settling Defendant  
4 has entered into a Consent Decree requiring implementation of the Selected  
5 Remedy. The notice also shall describe the land use restrictions, if any, established  
6 pursuant to Paragraphs 27.b and 28.b. Such notice(s) shall identify the United  
7 States District Court in which the Consent Decree was filed, the name and civil  
8 action number of this case, and the date the Consent Decree was entered by the  
9 Court. Settling Defendant shall record the notice(s) within thirty days of DOI's  
10 approval of the notice(s). Settling Defendant shall provide DOI with a certified  
11 copy of the recorded notice(s) within ten days of recording such notice(s).

12           b. Settling Defendant shall, at least 60 days prior to any Transfer  
13 of any real property located at the Site, give written notice: (i) to the transferee  
14 regarding the Consent Decree and any Institutional Controls regarding the real  
15 property; and (ii) to DOI and the State regarding the proposed Transfer, including  
16 the name and address of the transferee and the date on which the transferee was  
17 notified of the Consent Decree and any Institutional Controls.

18           c. Settling Defendant may Transfer any real property located at  
19 the Site only if Settling Defendant has obtained an agreement from the transferee,  
20 enforceable by Settling Defendant and the United States, to allow access and  
21 restrict land/water use, pursuant to Paragraphs 28.a and 28.b, and DOI has  
22 approved the agreement in writing. If, after a Transfer of the real property, the  
23 transferee fails to comply with the agreement provided for in this Paragraph 10.c,  
24 Settling Defendant shall take all reasonable steps to obtain the transferee's  
25 compliance with such agreement. The United States may seek the transferee's  
26 compliance with the agreement and/or assist Settling Defendant in obtaining  
27 compliance with the agreement. Settling Defendant shall reimburse the United  
28 States under Section XVI (Payments for Response Costs), for all costs incurred,

1 direct or indirect, by the United States regarding obtaining compliance with such  
2 agreement, including, but not limited to, the cost of attorney time.

3 d. In the event of any Transfer of real property located at the Site,  
4 unless the United States otherwise consents in writing, Settling Defendant shall  
5 continue to comply with its obligations under the Consent Decree, including, but  
6 not limited to, its obligation to provide and/or secure access, to implement,  
7 maintain, monitor, and report on Institutional Controls, and to abide by such  
8 Institutional Controls.

## 9 **VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT**

### 10 11. Selection of Supervising Contractor.

11 a. All aspects of the Work to be performed by Settling Defendant  
12 pursuant to Sections VI (Performance of the Work by Settling Defendant), VII  
13 (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), IX  
14 (Access and Institutional Controls), and XV (Emergency Response) shall be under  
15 the direction and supervision of the Supervising Contractor, the selection of which  
16 shall be subject to disapproval by DOI. Within thirty days after the lodging of this  
17 Consent Decree, Settling Defendant shall notify DOI in writing of the name, title,  
18 and qualifications of any contractor proposed to be the Supervising Contractor.  
19 With respect to any contractor proposed to be Supervising Contractor, Settling  
20 Defendant shall demonstrate that the proposed contractor has a quality assurance  
21 system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines  
22 for Quality Systems for Environmental Data Collection and Environmental  
23 Technology Programs" (American National Standard, January 5, 1995), by  
24 submitting a copy of the proposed contractor's Quality Management Plan  
25 ("QMP"). The QMP should be prepared in accordance with "EPA Requirements  
26 for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001,  
27 reissued May 2006) or equivalent documentation as determined by DOI. DOI will  
28 issue a notice of disapproval or an authorization to proceed regarding hiring of the

1 proposed contractor. If at any time thereafter, Settling Defendant proposes to  
2 change a Supervising Contractor, Settling Defendant shall give such notice to DOI  
3 and must obtain an authorization to proceed from DOI before the new Supervising  
4 Contractor performs, directs, or supervises any Work under this Consent Decree.

5           b. If DOI disapproves a proposed Supervising Contractor, DOI  
6 will notify Settling Defendant in writing. Settling Defendant shall submit to DOI a  
7 list of contractors, including the qualifications of each contractor, who would be  
8 acceptable to Settling Defendant within 30 days of receipt of DOI's disapproval of  
9 the contractor previously proposed. DOI will provide written notice of the names  
10 of any contractor(s) that it disapproves and an authorization to proceed with  
11 respect to any of the other contractors. Settling Defendant may select any  
12 contractor from that list that is not disapproved and shall notify DOI of the name of  
13 the contractor selected within thirty days of DOI's authorization to proceed.

14           c. If DOI fails to provide written notice of its authorization to  
15 proceed or disapproval as provided in this Paragraph and this failure prevents  
16 Settling Defendant from meeting one or more deadlines in a plan approved by DOI  
17 pursuant to this Consent Decree, Settling Defendant may seek relief under Section  
18 XVIII (Force Majeure).

19           12. Remedial Design.

20           a. On May 2, 2011, Settling Defendant submitted to DOI and  
21 DTSC a draft work plan for the design of the Remedial Action at the Site. Within  
22 45 days after Settling Defendant's receipt of DTSC and DOI's direction to finalize  
23 the Remedial Design Work Plan, Settling Defendant shall submit the Remedial  
24 Design Work Plan to DOI and DTSC. The Remedial Design Work Plan shall  
25 provide the framework and process for the design of the Selected Remedy set forth  
26 in the ROD, in accordance with the SOW, and for achievement of the Performance  
27 Standards and other requirements set forth in the ROD, this Consent Decree,  
28 and/or the SOW. Upon its approval by DOI, the Remedial Design Work Plan shall

1 be incorporated into and enforceable under this Consent Decree.

2           b.     The Remedial Design Work Plan shall include plans and  
3 schedules for implementation of all remedial design and pre-design tasks identified  
4 in the SOW, including but not limited to plans and schedules for the completion of:  
5 (1) design criteria and assumptions and conceptual treatment schemes; and (2) a  
6 Construction Quality Assurance Plan.

7           c.     Upon approval of the Remedial Design Work Plan by DOI,  
8 after a reasonable opportunity for review and comment by the State, Settling  
9 Defendant shall implement the Remedial Design Work Plan. Settling Defendant  
10 shall submit to DOI and the State all plans, reports, and other deliverables required  
11 under the approved Remedial Design Work Plan in accordance with the approved  
12 schedule for review and approval pursuant to Section XI (DOI Approval of Plans  
13 and Other Submissions). Unless otherwise directed by DOI, and after coordination  
14 with DTSC as specified in the DOI/DTSC MOU, Settling Defendant shall not  
15 commence further Remedial Design activities at the Site prior to approval of the  
16 Remedial Design Work Plan.

17           d.     The preliminary design submission shall include, at a  
18 minimum, the following: (1) design basis and design criteria report(s); (2) results  
19 of treatability studies, if applicable; (3) results of pre-design work; (4) project  
20 delivery strategy; (5) preliminary plans, drawings, sketches, and schematics; (6)  
21 preliminary list and anticipated format of required specifications in outline form;  
22 and (7) preliminary construction schedule.

23           e.     The intermediate design submission shall be a continuation and  
24 expansion of the preliminary design, to include (1) revised design basis and design  
25 criteria report(s); (2) intermediate drawings and specification; (3) intermediate cost  
26 estimates; (4) a draft construction schedule; and (5) geotechnical analysis  
27 (appendix).

28           f.     The pre-final/final design submission shall include, at a

1 minimum, the following: (1) pre-final/final Drawings and Specifications including  
2 complete specifications, complete drawings, and schematics; (2) Operation and  
3 Maintenance Plan and support appendices; (3) final design basis and design criteria  
4 report(s); (4) Construction Quality Assurance Project Plan ("CQAPP"); (5) Field  
5 Sampling Plan (directed at measuring progress towards meeting Performance  
6 Standards), including a Groundwater Monitoring Plan; (6) Contingency Plan; (7)  
7 IM-3 Decommissioning Plan; (8) pre-final/final remedial action cost estimate; and  
8 (9) pre-final construction schedule. The CQAPP, which shall detail the approach  
9 to quality assurance during construction activities at the Site, shall specify a quality  
10 assurance official, independent of the Supervising Contractor, to conduct a quality  
11 assurance program during the construction phase of the project.

12 13. Remedial Action.

13 a. Concurrently with the submittal of the pre-final/final design  
14 package, Settling Defendant shall submit to DOI and the State a work plan for the  
15 performance of the Remedial Action at the Site ("Remedial Action Work Plan").  
16 The Remedial Action Work Plan shall provide for construction and  
17 implementation of the remedy set forth in the ROD and achievement of the  
18 Performance Standards, in accordance with this Consent Decree, the ROD, the  
19 SOW, and the design plans and specifications developed in accordance with the  
20 Remedial Design Work Plan and approved by DOI. Upon its approval by DOI and  
21 DTSC, the Remedial Action Work Plan shall be incorporated into and enforceable  
22 under this Consent Decree. At the same time as it submits the Remedial Action  
23 Work Plan, Settling Defendant shall submit to DOI and the State a Health and  
24 Safety Plan for field activities required by the Remedial Action Work Plan which  
25 conforms to the applicable Occupational Safety and Health Administration and  
26 DOI requirements including, but not limited to, 29 C.F.R. § 1910.120.

27 b. The Remedial Action Work Plan shall include the following:  
28 (1) schedule for completion of the Remedial Action; (2) method for selection of the

1 contractor; (3) schedule for developing and submitting other required Remedial  
2 Action plans; (4) sampling and monitoring during construction; (5) methodology  
3 for implementing the Operation and Maintenance Plan (including Contingency  
4 Plan); (6) methodology for implementing the Contingency Plan; (7) Final  
5 Construction Quality Assurance Plan; (8) Site Management Plan; (9) IM-3  
6 Decommissioning Plan; (10) Protocol for documenting ARARs Compliance; (11)  
7 Project Management Plan; (12) Habitat Restoration Plan; and (13) procedures and  
8 plans for the decontamination of equipment and the disposal of contaminated  
9 materials. The Remedial Action Work Plan also shall include the methodology for  
10 overseeing and implementing the Construction Quality Assurance Plan and a  
11 schedule for implementing all Remedial Action tasks identified in the final design  
12 submission and shall identify the initial formulation of Settling Defendant's  
13 Remedial Action project team.

14 c. Upon approval of the Remedial Action Work Plan by DOI,  
15 after a reasonable opportunity for review and comment by the State, Settling  
16 Defendant shall implement the activities required under the Remedial Action Work  
17 Plan. Settling Defendant shall submit to DOI and the State all reports and other  
18 deliverables required under the approved Remedial Action Work Plan in  
19 accordance with the approved schedule for review and approval pursuant to  
20 Section XI (DOI Approval of Plans and Other Submissions). Unless otherwise  
21 directed by DOI, and after coordination with DTSC as specified in the DOI/DTSC  
22 MOU, Settling Defendant shall not commence physical Remedial Action activities  
23 at the Site prior to approval of the Remedial Action Work Plan.

24 14. Achievement of Performance Standards. Settling Defendant shall  
25 continue to implement the Remedial Action, including any required O&M, until  
26 the Performance Standards are achieved. In the event the Performance Standards  
27 are modified pursuant to CERCLA § 121(d)(4), Settling Defendant shall continue  
28 to implement Remedial Action until such modified Performance Standards are

1 achieved.

2 15. Modification of SOW or Related Work Plans.

3 a. If DOI determines that it is necessary to modify the work  
4 specified in the SOW and/or work plans developed pursuant to the SOW to achieve  
5 and maintain the Performance Standards or to carry out and maintain the  
6 effectiveness of the Remedial Action, and such modification is consistent with the  
7 scope of the remedy set forth in the ROD, then, after a reasonable opportunity for  
8 review and comment by the State and coordination with DTSC as specified in the  
9 DOI/DTSC MOU, DOI may issue such modification in writing and shall notify  
10 Settling Defendant of such modification. For the purposes of this Paragraph and  
11 Paragraph 51 (Completion of the Work) only, the "scope of the remedy set forth in  
12 the ROD" means all measures needed to attain Remedial Action Objectives, as  
13 described in Sections II.H. and II.L. of the ROD. If Settling Defendant objects to  
14 the modification it may, within 30 days after DOI's notification, seek dispute  
15 resolution under Paragraph 67 (Record Review).

16 b. The SOW and/or related work plans shall be modified: (i) in  
17 accordance with the modification issued by DOI; or (ii) if Settling Defendant  
18 invokes dispute resolution, in accordance with the final resolution of the dispute.  
19 The modification shall be incorporated into and enforceable under this Consent  
20 Decree, and Settling Defendant shall implement all work required by such  
21 modification. Settling Defendant shall incorporate the modification into the  
22 Remedial Design or Remedial Action Work Plan under Paragraph 12 or 13, as  
23 appropriate.

24 c. Nothing in this Paragraph shall be construed to limit DOI's  
25 authority to require performance of further response actions as otherwise provided  
26 in this Consent Decree.

27 16. Nothing in this Consent Decree, the SOW, or the Remedial  
28 Design or Remedial Action Work Plans constitutes a warranty or representation of

1 any kind by Plaintiff that compliance with the work requirements set forth in the  
2 SOW and the Work Plans will achieve the Performance Standards.

3 17. Off-Site Shipment of Waste Material.

4 a. Settling Defendant may ship Waste Material associated with the  
5 implementation of the Selected Remedy from the Site to an off-Site facility only if  
6 it demonstrates to DOI's satisfaction, prior to the first shipment, and annually  
7 thereafter, that EPA has determined that the proposed receiving facility is  
8 operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440. In  
9 the event Settling Defendant knows or has reason to know that the receiving  
10 facility no longer meets the acceptability criteria established by 40 CFR §  
11 300.440(b), as determined by EPA, Settling Defendant shall inform DOI and shall  
12 propose an alternate receiving facility prior to any subsequent shipments. In the  
13 event Settling Defendant proposes an alternate receiving facility for any reason,  
14 Settling Defendant shall satisfy the requirements of this Paragraph with respect to  
15 any such proposed alternate receiving facility.

16 b. Settling Defendant may ship Waste Material associated with  
17 implementation of the Selected Remedy from the Site to an out-of-state waste  
18 management facility only if it provides written notice to the appropriate State  
19 environmental official in the receiving facility's State and to the DOI Project  
20 Manager. Settling Defendant shall provide such notice prior to the first shipment  
21 of Waste Material, and shall comply with State law with regard to providing any  
22 further notifications. This notice requirement shall not apply to any off-Site  
23 shipments when the total quantity of all such shipments will not exceed ten cubic  
24 yards. The written notice shall include the following information: (i) the name and  
25 location of the receiving facility; (ii) the type and quantity of Waste Material to be  
26 shipped; (iii) the schedule for the shipment(s); and (iv) the method of  
27 transportation. Settling Defendant also shall notify the State environmental official  
28 referenced above and the DOI Project Manager of any major changes in the



1 shipment plan, such as a decision to ship the Waste Material to a different out-of-  
2 state facility.

## 3 **VII. REMEDY REVIEW**

4 18. Periodic Review. Settling Defendant shall conduct any studies and  
5 investigations that DOI requests in order to permit DOI to conduct reviews of  
6 whether the Remedial Action is protective of human health and the environment at  
7 least every five years as required by Section 121(c) of CERCLA, 42 U.S.C.  
8 § 9621(c), and any applicable regulations.

9 19. DOI Selection of Further Response Actions. If DOI determines, at  
10 any time, that the Remedial Action is not protective of human health and the  
11 environment, DOI may select further response actions for the Site in accordance  
12 with the requirements of CERCLA and the NCP.

13 20. Opportunity To Comment. Settling Defendant and, if required by  
14 Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public,  
15 will be provided with an opportunity to comment on any further response actions  
16 proposed by DOI as a result of the review conducted pursuant to Section 121(c) of  
17 CERCLA and to submit written comments for the record during the comment  
18 period.

19 21. Settling Defendant's Obligation To Perform Further Response  
20 Actions. If DOI selects further response actions addressing groundwater  
21 contamination at the Site, DOI may require Settling Defendant to perform such  
22 further response actions. Settling Defendant may invoke the procedures set forth  
23 in Section XIX (Dispute Resolution) to dispute (a) DOI's determination that the  
24 Remedial Action is not protective of human health and the environment, or (b)  
25 DOI's selection of the further response actions. Disputes pertaining to whether the  
26 Remedial Action is protective or to DOI's selection of further response actions  
27 shall be resolved pursuant to Paragraph 67 (Record Review).

28 22. Submission of Plans. If Settling Defendant is required to perform

1 further response actions pursuant to Paragraph 21, Settling Defendant shall submit  
2 a plan for such response action to DOI for approval in accordance with the  
3 procedures of Section VI (Performance of the Work by Settling Defendant).  
4 Settling Defendant shall implement the approved plan in accordance with this  
5 Consent Decree.

## 6 **VIII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS**

### 7 **23. Quality Assurance.**

8 a. Settling Defendant shall use quality assurance, quality control,  
9 and chain of custody procedures for all samples in accordance with "EPA  
10 Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003,  
11 March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans  
12 (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to  
13 such guidelines upon notification by DOI to Settling Defendant of such  
14 amendment. Amended guidelines shall apply only to procedures conducted after  
15 such notification.

16 b. Prior to the commencement of any sampling and analysis  
17 activities under this Consent Decree, Settling Defendant shall submit to DOI for  
18 approval, after a reasonable opportunity for review and comment by the State, a  
19 Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the  
20 NCP and applicable guidance documents. If relevant to the proceeding, the Parties  
21 agree that validated sampling data generated in accordance with the QAPP(s) and  
22 reviewed and approved by DOI shall be admissible as evidence, without objection,  
23 in any proceeding under this Consent Decree. Settling Defendant shall ensure that  
24 DOI personnel and its authorized representatives are allowed access at reasonable  
25 times to all laboratories (so long as the laboratories remain in business) utilized by  
26 Settling Defendant in implementing this Consent Decree. In addition, Settling  
27 Defendant shall ensure that such laboratories shall analyze all samples submitted  
28 by DOI or its contractor(s) pursuant to the QAPP for quality assurance monitoring.

1 Settling Defendant shall ensure that the laboratories it utilizes for the analysis of  
2 samples taken pursuant to this Consent Decree perform all analyses according to  
3 accepted EPA methods. Settling Defendant shall ensure that all laboratories it uses  
4 for analysis of samples taken pursuant to this Consent Decree participate in an  
5 EPA-equivalent QA/QC program. Settling Defendant shall use only laboratories  
6 that have a documented Quality System which complies with ANSI/ASQC E4-  
7 1994, "Specifications and Guidelines for Quality Systems for Environmental Data  
8 Collection and Environmental Technology Programs" (American National  
9 Standard, January 5, 1995), and "EPA Requirements for Quality Management  
10 Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or  
11 equivalent documentation as determined by DOI. DOI may consider laboratories  
12 accredited under the National Environmental Laboratory Accreditation Program  
13 ("NELAP") or the State of California Environmental Laboratory Accreditation  
14 Program ("ELAP") as meeting the Quality System requirements. Settling  
15 Defendant shall ensure that all field methodologies utilized in collecting samples  
16 for subsequent analysis pursuant to this Consent Decree are conducted in  
17 accordance with the procedures set forth in the QAPP approved by DOI.

18 24. Upon request, Settling Defendant shall allow split or duplicate  
19 samples to be taken by DOI or its authorized representatives. Settling Defendant  
20 shall notify DOI not less than 28 days in advance of any sample collection activity  
21 unless shorter notice is agreed to by DOI. In addition, DOI shall have the right to  
22 take any additional samples that DOI deems necessary. Upon request, DOI shall  
23 allow Settling Defendant to take split or duplicate samples of any samples it takes  
24 as part of Plaintiff's oversight of Settling Defendant's implementation of the Work.

25 25. Settling Defendant shall submit to DOI one electronic copy (in PDF)  
26 of the Level 1 results of all sampling and/or tests or other data obtained or  
27 generated by or on behalf of Settling Defendant with respect to the Site and/or the  
28 implementation of this Consent Decree unless DOI agrees otherwise. Hard copies

1 of the Level 1 data package will be provided to DOI upon request.

2       26. Notwithstanding any provision of this Consent Decree, the United  
3 States retains all of its information gathering and inspection authorities and rights,  
4 including enforcement actions related thereto, under CERCLA, RCRA, and any  
5 other applicable statutes or regulations.

6                   **IX. ACCESS AND INSTITUTIONAL CONTROLS**

7       27. If the Site, or any other real property where access or land/water use  
8 restrictions are needed, is owned or controlled by Settling Defendant:

9           a. Settling Defendant shall, commencing on the date of lodging of  
10 the Consent Decree, provide the United States and its representatives, contractors,  
11 and subcontractors, with access at all reasonable times to the Site, or such other  
12 real property, to conduct any activity regarding the Consent Decree including, but  
13 not limited to, the following activities:

- 14                   (1) Monitoring the Work;
- 15                   (2) Verifying any data or information submitted to the  
16                   United States;
- 17                   (3) Conducting investigations regarding contamination at or  
18                   near the Site;
- 19                   (4) Obtaining samples;
- 20                   (5) Assessing the need for, planning, or implementing  
21                   additional response actions at or near the Site;
- 22                   (6) Assessing implementation of quality assurance and  
23                   quality control practices as defined in the approved  
24                   Quality Assurance Project Plans;
- 25                   (7) Implementing the Work pursuant to the conditions set  
26                   forth in Paragraph 83 (Work Takeover);
- 27                   (8) Inspecting and copying records, operating logs, contracts,  
28                   or other documents maintained or generated by Settling

1 Defendant or their agents, consistent with Section XXIV  
2 (Access to Information);

3 (9) Assessing Settling Defendant's compliance with the  
4 Consent Decree;

5 (10) Determining whether the Site or other real property is  
6 being used in a manner that is prohibited or restricted, or  
7 that may need to be prohibited or restricted under the  
8 Consent Decree; and

9 (11) Implementing, monitoring, maintaining, reporting on,  
10 and enforcing any Institutional Controls.

11 b. commencing on the date of lodging of the Consent Decree,  
12 Settling Defendant shall not use the Site, or such other real property, in any manner  
13 that DOI determines will pose an unacceptable risk to human health or to the  
14 environment due to exposure to Waste Materials or interfere with or adversely  
15 affect the implementation, integrity, or protectiveness of the Remedial Action.

16 28. If the Site, or any other real property where access and/or land/water  
17 use restrictions are needed, is owned or controlled by persons other than any  
18 Settling Defendant, if requested by DOI, Settling Defendant shall use best efforts  
19 to secure from such persons:

20 a. an agreement to provide access thereto for the United States and  
21 Settling Defendant, and their representatives, contractors and subcontractors, to  
22 conduct any activity regarding the Consent Decree including, but not limited to,  
23 the activities listed in Paragraph 27.a;

24 b. an agreement, enforceable by Settling Defendant and the United  
25 States, to refrain from using the Site, or such other real property, in any manner  
26 that DOI determines will pose an unacceptable risk to human health or to the  
27 environment due to exposure to Waste Materials or interfere with or adversely  
28 affect the implementation, integrity, or protectiveness of the Remedial Action. The

1 agreement shall include, but not be limited to, the land/water use restrictions  
2 required pursuant to Paragraph 27.b.

3           29. For purposes of Paragraph 28, "best efforts" includes the  
4 payment of reasonable sums of money to obtain access or an agreement to restrict  
5 land/water use. If, within 90 days of DOI's request for such an agreement, Settling  
6 Defendant has not obtained agreements to provide access and/or restrict land/water  
7 use, as required by Paragraph 28, Settling Defendant shall promptly notify the  
8 United States in writing, and shall include in that notification a summary of the  
9 steps that Settling Defendant has taken to attempt to comply with Paragraph 28.  
10 The United States may, as it deems appropriate, assist Settling Defendant in  
11 obtaining access or agreements to restrict land/water use. Settling Defendant shall  
12 reimburse the United States under Section XVI (Payments for Response Costs), for  
13 all costs incurred, direct or indirect, by the United States in obtaining such access  
14 or agreements to restrict land/water use, including, but not limited to, the cost of  
15 attorney time and any sums of money paid by the United States to obtain access or  
16 an agreement to restrict land/water use. Settling Defendant may invoke the  
17 procedures set forth in Section XIX (Dispute Resolution) to dispute DOI's or  
18 DOJ's costs incurred in obtaining such access or agreements to restrict land/water  
19 use.

20           30. If DOI determines that Institutional Controls in the form of federal,  
21 state or local laws, regulations, ordinances, zoning restrictions, or other  
22 governmental controls are needed, Settling Defendant shall cooperate with DOI's  
23 efforts to secure and ensure compliance with such governmental controls.

24           31. Notwithstanding any provision of the Consent Decree, the United  
25 States retains all of its access authorities and rights, as well as all of its rights to  
26 require Institutional Controls, including enforcement authorities related thereto,  
27 under CERCLA, RCRA, and any other applicable statute or regulations.

## 28           **X. REPORTING REQUIREMENTS**

1           32. In addition to any other requirement of this Consent Decree, Settling  
2 Defendant shall submit to DOI and the State one electronic copy of written  
3 monthly progress reports during remedy construction that: (a) describe the actions  
4 which have been taken toward achieving compliance with this Consent Decree  
5 during the previous month; (b) include a summary of available results of sampling  
6 and tests and all other data received or generated by Settling Defendant or its  
7 contractors or agents in the previous month; (c) describe all actions, including, but  
8 not limited to, data collection and implementation of work plans, which are  
9 scheduled for the next six weeks and provide other information relating to the  
10 progress of construction, including, but not limited to, critical path diagrams, and  
11 Gantt charts; (d) include information regarding percentage of completion,  
12 unresolved delays encountered or anticipated that may affect the future schedule  
13 for implementation of the Work, and a description of efforts made to mitigate those  
14 delays or anticipated delays; (e) include any modifications to the work plans or  
15 other schedules that Settling Defendant have proposed to DOI or that have been  
16 approved by DOI; and (f) if requested by DOI to assist in community involvement  
17 activities (as provided in Section XXIX Community Relations), describe all  
18 activities undertaken in support of the Community Involvement Plan during the  
19 previous month and those to be undertaken in the next six weeks. Hard copies will  
20 be provided to DOI upon request. Settling Defendant shall submit these progress  
21 reports to DOI and the State by the tenth day of every month following the lodging  
22 of this Consent Decree until DOI notifies Settling Defendant pursuant to  
23 Paragraph 51.b of Section XIV (Certification of Completion). If requested by  
24 DOI, Settling Defendant shall also provide briefings for DOI to discuss the  
25 progress of the Work.

26           33. Settling Defendant shall notify DOI of any change in the schedule  
27 described in the monthly progress report for the performance of any activity,  
28 including, but not limited to, data collection and implementation of work plans, no

1 later than seven days prior to the performance of the activity, or as otherwise  
2 agreed to by Settling Defendant and DOI.

3           34. Upon the occurrence of any event during performance of the  
4 Work that Settling Defendant is required to report pursuant to Section 103(a) and  
5 (f) of CERCLA, 42 U.S.C. § 9603(a), (f), or Section 304(a) of the Emergency  
6 Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11004(a),  
7 Settling Defendant shall within 24 hours of the onset of such event orally notify the  
8 DOI Project Manager or one of the Bureau (BLM, FWS, or BOR) Project  
9 Managers (in the event of the unavailability of the DOI Project Manager). These  
10 reporting requirements are in addition to the reporting required by CERCLA  
11 Section 103 or EPCRA Section 304.

12           35. Within 30 days of the onset of such an event, Settling Defendant shall  
13 furnish to DOI a written report, signed by Settling Defendant's Project Manager,  
14 setting forth the events that occurred and the measures taken, and to be taken, in  
15 response thereto. Within 45 days of the conclusion of such an event, Settling  
16 Defendant shall submit a report setting forth all actions taken in response thereto.

17           36. Settling Defendant shall submit hard copies of draft documents as  
18 requested by DOI and a minimum of five (5) hard copies of all final plans, reports,  
19 data, and other deliverables required by the SOW, the Remedial Design Work  
20 Plan, the Remedial Action Work Plan, or any other approved plans to DOI in  
21 accordance with the schedules set forth in such plans. Settling Defendant shall  
22 submit in electronic form all or any portion of any deliverables Settling Defendant  
23 is required to submit pursuant to the provisions of this Consent Decree.

24           37. All deliverables submitted by Settling Defendant to DOI which  
25 purport to document Settling Defendant's compliance with the terms of this  
26 Consent Decree shall be signed by an authorized representative of Settling  
27 Defendant.

## 28           **XI. DOI APPROVAL OF PLANS, REPORTS, AND OTHER**



## **DELIVERABLES**

### **38. Initial Submissions.**

a. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree, DOI, after reasonable opportunity for review and comment by the State and after coordination with DTSC as specified in the DOI/DTSC MOU, shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

b. DOI, after coordination with DTSC as specified in the DOI/DTSC MOU, also may modify the initial submission to cure deficiencies in the submission if: (i) DOI determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

39. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 38.a.(iii) or (iv), or if required by a notice of approval upon specified conditions under Paragraph 38.a.(ii), Settling Defendant shall, within 60 days or such longer time as specified by DOI in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, and after coordination with DTSC as specified in the DOI/DTSC MOU, DOI may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Settling Defendant to correct the deficiencies; or (e) any combination of the foregoing.

40. Material Defects. If a resubmitted plan, report, or other deliverable

1 contains a material defect, and the plan, report, or other deliverable is disapproved  
2 or modified by DOI under Paragraph 38.b.(ii) or 39 due to such material defect,  
3 then the material defect shall constitute a lack of compliance for purposes of  
4 Paragraph 70. The provisions of Section XIX (Dispute Resolution) and  
5 Section XX (Stipulated Penalties) shall govern the accrual and payment of any  
6 stipulated penalties regarding Settling Defendant's submissions under this Section.

7       41. Approval and Implementation.

8           a. At such time as DOI provides its final comments on a plan,  
9 report, or other deliverable subject to an enforceable deadline under this Consent  
10 Decree, and after coordination with DTSC as specified in the DOI/DTSC MOU,  
11 DOI shall direct Settling Defendant to finalize the document in conformance with  
12 the comments and submit the document for approval by issuing a notification to  
13 proceed referencing this paragraph of the Consent Decree. Once DOI issues this  
14 notification to proceed, such notification shall trigger the time period established in  
15 Section XX (Stipulated Penalties) for submittal of the final document. Should  
16 DTSC or DOI require additional changes to a plan, report or other deliverable  
17 under this Consent Decree after a notification to proceed is issued by DOI, Settling  
18 Defendant may request that the time period for submittal of the final document be  
19 renewed or extended. DOI will, in coordination with DTSC, approve such request  
20 if, in DOI's opinion renewing or extending the applicable time period is warranted.  
21 Any agreement or refusal by DOI to renew, toll, or extend the applicable time  
22 period shall be provided to Settling Defendant in writing, and may be appealed by  
23 Settling Defendant pursuant to Section XIX (Dispute Resolution).

24           b. Upon approval, approval upon conditions, or modification by  
25 DOI under Paragraph 38 or 39, of any plan, report, or other deliverable, or any  
26 portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall  
27 be incorporated into and enforceable under this Consent Decree; and (b) Settling  
28 Defendant shall take any action required by such plan, report, or other deliverable,

1 or portion thereof, subject only to its right to invoke the Dispute Resolution  
2 procedures set forth in Section XIX (Dispute Resolution) with respect to the  
3 modifications or conditions made by DOI. The implementation of any  
4 non-deficient portion of a plan, report, or other deliverable submitted or  
5 resubmitted under Paragraph 38 or 39 shall not relieve Settling Defendant of any  
6 liability for stipulated penalties under Section XX (Stipulated Penalties).

## 7 **XII. PROJECT MANAGERS**

8 42. Within 20 days of lodging this Consent Decree, Settling Defendant  
9 and DOI will notify each other, in writing, of the name, address, and telephone  
10 number of their respective designated Project Managers and Alternate Project  
11 Managers. DOI's Alternate Project Manager shall be a designated Bureau Project  
12 Manager. If a Project Manager or Alternate Project Manager initially designated is  
13 changed, the identity of the successor will be given to the other Parties at least five  
14 working days before the change occurs, unless impracticable, but in no event later  
15 than the actual day the change is made. Settling Defendant's Project Manager  
16 shall be subject to disapproval by DOI and shall have the technical expertise  
17 sufficient to adequately oversee all aspects of the Work. Settling Defendant's  
18 Project Manager shall not be an attorney for any Settling Defendant in this matter.  
19 He or she may assign other representatives, including other contractors, to serve as  
20 a Site representative for oversight of performance of daily operations during  
21 remedial activities.

22 43. Plaintiff may designate other representatives, including, but not  
23 limited to, DOI employees, and federal contractors and consultants, to observe and  
24 monitor the progress of any activity undertaken pursuant to this Consent Decree.  
25 DOI's Project Manager or designated Bureau Project Manager shall have the  
26 authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene  
27 Coordinator (OSC) by the NCP, 40 C.F.R. Part 300. DOI's Project Manager or  
28 Alternate Project Manager shall have authority, consistent with the NCP, to halt

1 any Work required by this Consent Decree and to take any necessary response  
2 action when he or she determines that conditions at the Site constitute an  
3 emergency situation or may present an immediate threat to public health or welfare  
4 or the environment due to release or threatened release of Waste Material. DOI's  
5 Project Manager will use best efforts to coordinate with DTSC, prior to halting any  
6 Work.

7 44. DOI's Project Manager and Settling Defendant's Project Manager will  
8 maintain communication in person or by phone, at a minimum, on a monthly basis.

### 9 XIII. PERFORMANCE GUARANTEE

10 45. In order to ensure the full and final completion of the Work, Settling  
11 Defendant shall establish and maintain a performance guarantee, initially in the  
12 amount of \$184,000,000 (hereinafter "Estimated Cost of the Work"). The  
13 performance guarantee, which must be satisfactory in form and substance to DOI,  
14 shall be in the form of one or more of the following mechanisms (provided that, if  
15 Settling Defendant intends to use multiple mechanisms, such multiple mechanisms  
16 in combination shall be limited to surety bonds guaranteeing payment, letters of  
17 credit, trust funds, and insurance policies):

18 a. A surety bond unconditionally guaranteeing payment and/or  
19 performance of the Work that is issued by a surety company among those listed as  
20 acceptable sureties on federal bonds as set forth in Circular 570 of the U.S.  
21 Department of the Treasury;

22 b. One or more irrevocable letters of credit, payable to or at the  
23 direction of DOI, that is issued by one or more financial institution(s) (i) that has  
24 the authority to issue letters of credit and (ii) whose letter-of-credit operations are  
25 regulated and examined by a federal or state agency;

26 c. A trust fund established for the benefit of DOI that is  
27 administered by a trustee (i) that has the authority to act as a trustee and (ii) whose  
28 trust operations are regulated and examined by a federal or state agency;

1 d. A policy of insurance that (i) provides DOI with acceptable  
2 rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has  
3 the authority to issue insurance policies in the applicable jurisdiction(s) and (b)  
4 whose insurance operations are regulated and examined by a federal or state  
5 agency;

6 e. A demonstration by Settling Defendant that Settling Defendant  
7 meets the financial test criteria of 40 C.F.R. § 264.143(f), or the financial test  
8 criteria the State of California has been authorized to implement consistent with 40  
9 C.F.R. § 264.149 with respect to the Estimated Cost of the Work (plus the  
10 amount(s) of any other federal or any state environmental obligations financially  
11 assured through the use of a financial test or guarantee), provided that all other  
12 requirements of 40 C.F.R. § 264.143(f) or the financial test criteria the State of  
13 California has been authorized to implement consistent with 40 C.F.R. §264.149,  
14 as applicable, are met to DOI's satisfaction; or

15 f. A written guarantee to fund or perform the Work executed in  
16 favor of DOI by one or more of the following: (i) a direct or indirect parent  
17 company of a Settling Defendant, or (ii) a company that has a "substantial business  
18 relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling  
19 Defendant; provided, however, that any company providing such a guarantee must  
20 demonstrate to the satisfaction of DOI that it satisfies the financial test and  
21 reporting requirements for owners and operators set forth in subparagraphs (1)  
22 through (8) of 40 C.F.R. § 264.143(f), or the financial test criteria the State of  
23 California has been authorized to implement consistent with 40 C.F.R. § 264.149  
24 with respect to the Estimated Cost of the Work (plus the amount(s) of any other  
25 federal or any state environmental obligations financially assured through the use  
26 of a financial test or guarantee) that it proposes to guarantee hereunder.

27 46. Settling Defendant has selected, and DOI has found satisfactory, as an  
28 initial performance guarantee the financial test pursuant to Paragraph 45.e, in the

1 form attached hereto as Appendix D and approved by DTSC under California  
2 regulations in the amount of \$198,000,000. DOI has determined that the California  
3 mechanisms under which Settling Defendant has implemented the performance  
4 guarantee, including but not limited to the financial test chosen herein, are at least  
5 equivalent to the financial mechanisms specified in this Section XIII, and that 40  
6 C.F.R. § 264.149 has been satisfied.

7       47. If, at any time after the Effective Date and before issuance of the  
8 Certification of Completion of the Work pursuant to Paragraph 51, Settling  
9 Defendant provides a performance guarantee for completion of the Work by means  
10 of a demonstration or guarantee pursuant to Paragraph 45.e or 45.f, Settling  
11 Defendant shall also comply with the other relevant requirements of 40 C.F.R.  
12 § 264.143(f), or equivalent requirements of the State of California relating to these  
13 mechanisms unless otherwise provided in this Consent Decree, including but not  
14 limited to: (a) the initial submission of required financial reports and statements  
15 from the relevant entity's chief financial officer ("CFO") and independent certified  
16 public accountant ("CPA"), in the form prescribed by EPA in its financial test  
17 sample CFO letters and CPA reports available at:  
18 [http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-](http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf)  
19 [samples.pdf](http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf) ; (b) the annual re-submission of such reports and statements within 90  
20 days after the close of each such entity's fiscal year; and (c) the prompt notification  
21 of DOI after each such entity determines that it no longer satisfies the financial test  
22 requirements set forth at 40 C.F.R. § 264.143(f)(1), or equivalent regulations of  
23 the State of California and in any event within 90 days after the close of any fiscal  
24 year in which such entity no longer satisfies such financial test requirements. For  
25 purposes of the performance guarantee mechanisms specified in this Section XIII,  
26 references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and  
27 "plugging and abandonment" shall be deemed to include the Work; the terms  
28 "current closure cost estimate," "current post-closure cost estimate," and "current

1 plugging and abandonment cost estimate” shall be deemed to include the Estimated  
2 Cost of the Work; the terms “owner” and “operator” shall be deemed to refer to  
3 Settling Defendant; and the terms “facility” and “hazardous waste facility” shall be  
4 deemed to include the Site.

5       48. In the event that DOI determines at any time that a performance  
6 guarantee provided by Settling Defendant pursuant to this Section is inadequate or  
7 otherwise no longer satisfies the requirements set forth in this Section, whether due  
8 to an increase in the estimated cost of completing the Work or for any other reason,  
9 or in the event that Settling Defendant becomes aware of information indicating  
10 that a performance guarantee provided pursuant to this Section is inadequate or  
11 otherwise no longer satisfies the requirements set forth in this Section, whether due  
12 to an increase in the estimated cost of completing the Work or for any other reason,  
13 Settling Defendant, within 60 days of receipt of notice of DOI’s determination or,  
14 as the case may be, within 60 days of Settling Defendant becoming aware of such  
15 information, shall obtain and present to DOI for approval, in coordination with  
16 DTSC, a proposal for a revised or alternative form of performance guarantee listed  
17 in Paragraph 45 that satisfies all requirements set forth in this Section XIII;  
18 provided, however, that if Settling Defendant cannot obtain such revised or  
19 alternative form of performance guarantee within such 60-day period, and provided  
20 further that Settling Defendant shall have commenced to obtain such revised or  
21 alternative form of performance guarantee within such 60-day period, and  
22 thereafter diligently proceeds to obtain the same, DOI shall extend such period for  
23 such time as is reasonably necessary for Settling Defendant in the exercise of due  
24 diligence to obtain such revised or alternative form of performance guarantee, such  
25 additional period not to exceed 60 days. On day 30, Settling Defendant shall  
26 provide to DOI a status report on its efforts to obtain the revised or alternative form  
27 of guarantee. In seeking approval for a revised or alternative form of performance  
28 guarantee, Settling Defendant shall follow the procedures set forth in

1 Paragraph 50.b.(2). Settling Defendant's inability to post a performance guarantee  
2 for completion of the Work shall in no way excuse performance of any other  
3 requirements of this Consent Decree, including, without limitation, the obligation  
4 of Settling Defendant to complete the Work in strict accordance with the terms of  
5 this Consent Decree. DOI shall coordinate with DTSC before requiring any  
6 alternative form of performance guarantee and shall take into consideration any  
7 amount provided by Settling Defendant under the CACA in establishing the  
8 amount of any alternative form of performance guarantee.

9 - 49. Funding for Work Takeover. The commencement of any Work  
10 Takeover pursuant to Paragraph 83 shall trigger DOI's right to receive the benefit  
11 of any performance guarantee(s) provided pursuant to Paragraphs 45.a, 45.b, 45.c,  
12 45.d, or 45.f, and at such time DOI shall have immediate access to resources  
13 guaranteed under any such performance guarantee(s), whether in cash or in kind,  
14 as needed to continue and complete the Work assumed by DOI under the Work  
15 Takeover. Upon the commencement of any Work Takeover, if (a) for any reason  
16 DOI is unable to promptly secure the resources guaranteed under any such  
17 performance guarantee(s), whether in cash or in kind, necessary to continue and  
18 complete the Work assumed by DOI under the Work Takeover, or (b) in the event  
19 that the performance guarantee involves a demonstration of satisfaction of the  
20 financial test criteria pursuant to Paragraph 45.e or Paragraph 45.f.(ii), Settling  
21 Defendant (or in the case of Paragraph 45.f.(ii), the guarantor) shall immediately  
22 upon written demand from DOI deposit into a special account as DOI may specify,  
23 in immediately available funds and without setoff, counterclaim, or condition of  
24 any kind, a cash amount up to but not exceeding the estimated cost of completing  
25 the Work as of such date, as determined by DOI. DOI shall coordinate with DTSC  
26 prior to any Work Takeover and on the use of such funds, using the process  
27 established in the DOI/DTSC MOU, to ensure that available resources in the  
28 amount provided by Settling Defendant under this Section XIII are adequate to



1 complete implementation of the Selected Remedy. In addition, if at any time DOI  
2 is notified by the issuer of a performance guarantee that such issuer intends to  
3 cancel the performance guarantee mechanism it has issued, then, unless Settling  
4 Defendant provide a substitute performance guarantee mechanism in accordance  
5 with this Section XIII no later than 30 days prior to the impending cancellation  
6 date, DOI shall be entitled (as of and after the date that is 30 days prior to the  
7 impending cancellation) to draw fully on the funds guaranteed under the then-  
8 existing performance guarantee, after coordination with DTSC. All DOI Work  
9 Takeover costs not reimbursed under this Paragraph shall be reimbursed under  
10 Section XVI (Payments for Response Costs).

11 50. Modification of Amount and/or Form of Performance Guarantee.

12 a. Reduction of Amount of Performance Guarantee. If Settling  
13 Defendant believes that the estimated cost of completing the Work has diminished  
14 below the amount set forth in Paragraph 45, Settling Defendant may, on any  
15 anniversary of the Effective Date, or at any other time agreed to by the Parties,  
16 petition DOI in writing to request a reduction in the amount of the performance  
17 guarantee provided pursuant to this Section so that the amount of the performance  
18 guarantee is equal to the estimated cost of completing the Work. Settling  
19 Defendant shall submit a written proposal for such reduction to DOI that shall  
20 specify, at a minimum, the estimated cost of completing the Work and the basis  
21 upon which such cost was calculated. In seeking approval for a reduction in the  
22 amount of the performance guarantee, Settling Defendant shall follow the  
23 procedures set forth in Paragraph 50.b.(2) for requesting a revised or alternative  
24 form of performance guarantee, except as specifically provided in this Paragraph  
25 50.a. If DOI decides to accept Settling Defendant's proposal for a reduction in the  
26 amount of the performance guarantee, either to the amount set forth in Settling  
27 Defendant's written proposal or to some other amount as selected by DOI, DOI  
28 will notify the petitioning Settling Defendant of such decision in writing within 60

1 days. Upon DOI's acceptance of a reduction in the amount of the performance  
2 guarantee, the Estimated Cost of the Work shall be deemed to be the estimated cost  
3 of completing the Work set forth in DOI's written decision. After receiving DOI's  
4 written decision, Settling Defendant may reduce the amount of the performance  
5 guarantee in accordance with and to the extent permitted by such written  
6 acceptance and shall submit copies of all executed and/or otherwise finalized  
7 instruments or other documents required in order to make the selected performance  
8 guarantee(s) legally binding in accordance with Paragraph 50.b.(2). In the event of  
9 a dispute, Settling Defendant may reduce the amount of the performance guarantee  
10 required hereunder only in accordance with a final administrative or judicial  
11 decision resolving such dispute pursuant to Section XIX (Dispute Resolution). No  
12 change to the form or terms of any performance guarantee provided under this  
13 Section, other than a reduction in amount, is authorized except as provided in  
14 Paragraphs 48 or 50.b.

15           b.     Change of Form of Performance Guarantee.

16                     (1)     If, after the Effective Date, Settling Defendant desires to  
17 change the form or terms of any performance guarantee provided pursuant to this  
18 Section, Settling Defendant may, on any anniversary of the Effective Date, or at  
19 any other time agreed to by the Parties, petition DOI in writing to request a change  
20 in the form or terms of the performance guarantee provided hereunder. The  
21 submission of such proposed revised or alternative performance guarantee shall be  
22 as provided in Paragraph 50.b.(2). Any decision made by DOI on a petition  
23 submitted under this Paragraph shall be made in DOI's sole and unreviewable  
24 discretion, and such decision shall not be subject to challenge by Settling  
25 Defendant pursuant to the dispute resolution provisions of this Consent Decree or  
26 in any other forum.

27                     (2)     Settling Defendant shall submit a written proposal for a  
28 revised or alternative performance guarantee to DOI which shall specify, at a

1 minimum, the estimated cost of completing the Work, the basis upon which such  
2 cost was calculated, and the proposed revised performance guarantee, including all  
3 proposed instruments or other documents required in order to make the proposed  
4 performance guarantee legally binding. The proposed revised or alternative  
5 performance guarantee must satisfy all requirements set forth or incorporated by  
6 reference in this Section. Settling Defendant shall submit such proposed revised or  
7 alternative performance guarantee to the DOI Project Manager in accordance with  
8 Section XXVI (Notices and Submissions). DOI will notify Settling Defendant in  
9 writing of its decision to accept or reject a revised or alternative performance  
10 guarantee submitted pursuant to this Paragraph. Within 60 days after receiving a  
11 written decision approving the proposed revised or alternative performance  
12 guarantee, Settling Defendant shall execute and/or otherwise finalize all  
13 instruments or other documents required in order to make the selected performance  
14 guarantee legally binding in a form substantially identical to the documents  
15 submitted to DOI as part of the proposal, and such performance guarantee shall  
16 thereupon be fully effective. Settling Defendant shall submit copies of all executed  
17 and/or otherwise finalized instruments or other documents required in order to  
18 make the selected performance guarantee legally binding to the DOI Project  
19 Manager within 60 days of receiving a written decision approving the proposed  
20 revised or alternative performance guarantee in accordance with Section XXVI  
21 (Notices and Submissions) and to the United States and DOI as specified in  
22 Section XXVI.

23 c. Release of Performance Guarantee. Settling Defendant shall not  
24 release, cancel, or discontinue any performance guarantee provided pursuant to this  
25 Section except as provided in this Paragraph. If Settling Defendant receives  
26 written notice from DOI in accordance with Paragraph 51 that the Work has been  
27 fully and finally completed in accordance with the terms of this Consent Decree, or  
28 if DOI otherwise so notifies Settling Defendant in writing, Settling Defendant may

1 thereafter release, cancel, or discontinue the performance guarantee provided  
2 pursuant to this Section. In the event of a dispute, Settling Defendant may release,  
3 cancel, or discontinue the performance guarantee required hereunder only in  
4 accordance with a final administrative or judicial decision resolving such dispute  
5 pursuant to Section XIX (Dispute Resolution).

#### 6 **XIV. CERTIFICATION OF COMPLETION**

##### 7 **51. Completion of the Work.**

8 a. Within 90 days after Settling Defendant concludes that all  
9 phases of the Work, other than any remaining activities required under Section VII  
10 (Remedy Review), have been fully performed, Settling Defendant shall schedule  
11 and conduct a pre-certification inspection to be attended by Settling Defendant and  
12 DOI. After the pre-certification inspection, and after consultation with DTSC,  
13 DOI will issue, at its sole discretion, a notice to proceed with the Construction  
14 Completion Report, and Settling Defendant shall submit a written Construction  
15 Completion Report by a registered professional engineer stating that the Work has  
16 been completed in full satisfaction of the requirements of this Consent Decree,  
17 consistent with the process set forth in Paragraph 41(a). The report shall contain  
18 the following statement, signed by a responsible corporate official of Settling  
19 Defendant or Settling Defendant's Project Manager:

20 I certify under penalty of law that this document and all attachments  
21 were prepared under my direction or supervision in accordance with a  
22 system designed to assure that qualified personnel properly gather and  
23 evaluate the information submitted. Based on my inquiry of the  
24 person or persons who manage the system, or those persons directly  
25 responsible for gathering the information, the information submitted  
26 is, to the best of my knowledge and belief, true, accurate, and  
complete. I am aware that there are significant penalties for  
submitting false information, including the possibility of fine and  
imprisonment for knowing violations.

27 If, after review of the written report, DOI, after reasonable opportunity for review  
28

1 and comment by the State, determines that any portion of the Work has not been  
2 completed in accordance with this Consent Decree, DOI will notify Settling  
3 Defendant in writing of the activities that must be undertaken by Settling  
4 Defendant pursuant to this Consent Decree to complete the Work, provided,  
5 however, that DOI may only require Settling Defendant to perform such activities  
6 pursuant to this Paragraph to the extent that such activities are consistent with the  
7 "scope of the remedy set forth in the ROD," as that term is defined in  
8 Paragraph 15.a. DOI will set forth in the notice a schedule for performance of such  
9 activities consistent with the Consent Decree and the SOW or require Settling  
10 Defendant to submit a schedule to DOI for approval pursuant to Section XI (DOI  
11 Approval of Plans and Other Submissions). Settling Defendant shall perform all  
12 activities described in the notice in accordance with the specifications and  
13 schedules established therein, subject to its right to invoke the dispute resolution  
14 procedures set forth in Section XIX (Dispute Resolution).

15           b. If DOI concludes, based on the initial or any subsequent request  
16 for Certification of Completion of the Work by Settling Defendant and after a  
17 reasonable opportunity for review and comment by the State, that the Work has  
18 been performed in accordance with this Consent Decree, DOI will so notify  
19 Settling Defendant in writing.

## 20                                   **XV. EMERGENCY RESPONSE**

21           52. If any action or occurrence during the performance of the Work which  
22 causes or threatens a release of Waste Material from the Site that constitutes an  
23 emergency situation or may present an immediate threat to public health or welfare  
24 or the environment, Settling Defendant shall, subject to Paragraph 53, immediately  
25 take all appropriate action to prevent, abate, or minimize such release or threat of  
26 release, and shall immediately notify DOI's Project Manager, or, if the Project  
27 Manager is unavailable, DOI's Alternate Project Manager. Settling Defendant  
28 shall take such actions in consultation with DOI's Project Manager or other

1 available authorized DOI officer and in accordance with all applicable provisions  
2 of the Health and Safety Plans, the Contingency Plans, and any other applicable  
3 plans or documents developed pursuant to the SOW. In the event that Settling  
4 Defendant fails to take appropriate response action as required by this Section, and  
5 DOI takes such action instead, Settling Defendant shall reimburse DOI all costs of  
6 the response action under Section XVI (Payments for Response Costs).

7 53. Subject to Section XXI (Covenants by Plaintiff), nothing in the  
8 preceding Paragraph or in this Consent Decree shall be deemed to limit any  
9 authority of the United States (a) to take all appropriate action to protect human  
10 health and the environment or to prevent, abate, respond to, or minimize an actual  
11 or threatened release of Waste Material on, at, or from the Site, or (b) to direct or  
12 order such action, or seek an order from the Court, to protect human health and the  
13 environment or to prevent, abate, respond to, or minimize an actual or threatened  
14 release of Waste Material on, at, or from the Site.

## 15 XVI. PAYMENTS FOR RESPONSE COSTS

16 54. Payments by Settling Defendant for Response Costs. Settling  
17 Defendant shall pay to DOI all Response Costs not inconsistent with the NCP.

18 a. Billing. On a periodic basis, DOI will send Settling Defendant  
19 a bill requiring payment, with a copy to the United States Department of Justice at  
20 the address listed below in Paragraph 54.b.i (referencing Department of Justice  
21 Number 90-11-3-07240/4), that includes a cost summary, which includes direct  
22 and indirect costs incurred by the Federal Agencies and their contractors and a  
23 DOJ case cost summary. DOI shall use its best efforts to submit bills requiring  
24 payment no less often than semi-annually. Failure by DOI to submit semi-annual  
25 bills shall not affect the Federal Agencies' right to reimbursement under this  
26 Consent Decree. Settling Defendant shall make all payments within 60 days of  
27 Settling Defendant's receipt of each bill requiring payment, or as otherwise agreed  
28 in writing by DOI with written confirmation provided to DOJ, except as otherwise

1 provided in Paragraph 56, in accordance with Paragraphs 54.b (Payment  
2 Instructions).

3           b.     Payment Instructions. All payments made to DOI pursuant to  
4 Paragraph 54 shall be made by Settling Defendant in accordance with instructions  
5 provided to the Settling Defendant from the Financial Litigation Unit ("FLU") of  
6 the United States Attorney's Office for the Central District of California after the  
7 issuance of a bill requiring payment in accordance with Paragraph 54.a.

8           i.     Settling Defendant shall send notification of payment  
9                   referencing the amount of payment, the site name, and the time  
10                  period for which reimbursement of response costs is being  
11                  provided to the following individuals:

12                   Pamela Innis  
13                   DOI Remedial Project Manager, Office of Environmental  
14                   Policy and Compliance  
15                   Department of the Interior  
16                   Denver Federal Center  
17                   P.O. Box 25007, MS D108  
18                   Denver, CO 80225-0007

19                   Courtney Hoover  
20                   Fund Manager, Central Hazardous Materials Fund  
21                   Department of the Interior  
22                   1849 C Street, N.W., Mail Stop 2342  
23                   Washington, D.C. 20240

24                   Chief  
25                   Environmental Enforcement Section  
26                   U.S. Department of Justice  
27                   Environment & Natural Resources Division  
28                   P.O. Box 7611  
29                   Washington, D.C. 20044-7611

30                   Casey S. Padgett, Esq.  
31                   Assistant Solicitor  
32                   Office of the Solicitor  
33                   1849 C Street, NW, MS 5530

2  
3 If needed, Settling Defendant may obtain additional information for transferring  
4 funds pursuant to this Paragraph from the FLU or the United States Department of  
5 Justice, Environmental Enforcement Section.

6 55. Interest. In the event that any payment required by Paragraph 54 is  
7 not made within 60 days of Settling Defendant's receipt of a bill, or such time as  
8 otherwise agreed by DOI, interest on the unpaid balance shall be paid at the rate  
9 established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),  
10 commencing on the 61st day after receipt of the bill and accruing through the date  
11 of the payment.

12 56. Settling Defendant may contest any Response Costs billed under  
13 Paragraph 54 if it determines that DOI has made a mathematical error or included a  
14 cost item that is not within the definition of Response Costs, or if it believes DOI  
15 incurred excess costs as a direct result of a DOI action that was inconsistent with a  
16 specific provision or provisions of the NCP. Such objection shall be made in  
17 writing within 45 days of receipt of the bill and must be sent to the United States  
18 pursuant to Section XXVI (Notices and Submissions). Any such objection shall  
19 specifically identify the contested Response Costs and the basis for objection. In  
20 the event of an objection, Settling Defendant shall pay all uncontested Response  
21 Costs to DOI within 60 days of DOI's issuance of the bill requiring payment, or  
22 such time as otherwise agreed by DOI. Simultaneously, Settling Defendant shall  
23 establish an interest-bearing escrow account in a federally-insured bank duly  
24 chartered in the State of California and remit to that escrow account funds  
25 equivalent to the amount of the contested Response Costs. Settling Defendant  
26 shall send to DOI, as provided in Section XXVI (Notices and Submissions), a copy  
27 of the transmittal letter and check paying the uncontested Response Costs, and a  
28 copy of the correspondence that establishes and funds the escrow account,



1 including, but not limited to, information containing the identity of the bank and  
2 bank account under which the escrow account is established as well as a bank  
3 statement showing the initial balance of the escrow account. Simultaneously with  
4 establishment of the escrow account, Settling Defendant shall initiate the Dispute  
5 Resolution procedures in Section XIX (Dispute Resolution). If the United States  
6 prevails in the dispute, Settling Defendant shall pay the sums due (with accrued  
7 Interest) to DOI within five days of the resolution of the dispute. If Settling  
8 Defendant prevails concerning any aspect of the contested costs, Settling  
9 Defendant shall pay that portion of the costs (plus associated accrued Interest) for  
10 which it did not prevail to DOI within five days of the resolution of the dispute.  
11 Settling Defendant shall be disbursed any balance of the escrow account. All  
12 payments to DOI under this Paragraph shall be made in accordance with Paragraph  
13 58.b (Payment Instructions). The dispute resolution procedures set forth in this  
14 Paragraph in conjunction with the procedures set forth in Section XIX (Dispute  
15 Resolution) shall be the exclusive mechanisms for resolving disputes regarding  
16 Settling Defendant's obligation to reimburse the United States for its Response  
17 Costs.

## 18 **XVII. INDEMNIFICATION AND INSURANCE**

### 19 **57. Settling Defendant's Indemnification of the United States.**

20 a. The United States does not assume any liability by entering into  
21 this Consent Decree or by virtue of any designation of Settling Defendant as DOI's  
22 authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).  
23 Settling Defendant shall indemnify, save and hold harmless the United States and  
24 its officials, agents, employees, contractors, subcontractors, or representatives for  
25 or from any and all claims or causes of action arising from, or on account of,  
26 negligent or other wrongful acts or omissions of Settling Defendant, its officers,  
27 directors, employees, agents, contractors, subcontractors, and any persons acting  
28 on their behalf or under their control, in carrying out activities pursuant to this

1 Consent Decree, including, but not limited to, any claims arising from any  
2 designation of Settling Defendant as DOI's authorized representative under Section  
3 104(e) of CERCLA. Further, Settling Defendant agrees to pay the United States  
4 all costs it incurs including, but not limited to, attorneys' fees and other expenses  
5 of litigation and settlement arising from, or on account of, claims made against the  
6 United States based on negligent or other wrongful acts or omissions of Settling  
7 Defendant, their officers, directors, employees, agents, contractors, subcontractors,  
8 and any persons acting on their behalf or under their control, in carrying out  
9 activities pursuant to this Consent Decree. The United States shall not be held out  
10 as a party to any contract entered into by or on behalf of Settling Defendant in  
11 carrying out activities pursuant to this Consent Decree. Neither Settling Defendant  
12 nor any such contractor shall be considered an agent of the United States.

13           b. The United States shall give Settling Defendant notice of any  
14 claim for which the United States plans to seek indemnification pursuant to  
15 Paragraph 57, and shall consult with Settling Defendant prior to settling such  
16 claim.

17       58. Settling Defendant covenants not to sue and agrees not to assert any  
18 claims or causes of action against the United States for damages or reimbursement  
19 or for set-off of any payments made or to be made to the United States, arising  
20 from or on account of any contract, agreement, or arrangement between Settling  
21 Defendant and any person for performance of Work on or relating to the Site,  
22 including, but not limited to, claims on account of construction delays. In addition,  
23 Settling Defendant shall indemnify and hold harmless the United States with  
24 respect to any and all claims for damages or reimbursement arising from or on  
25 account of any contract, agreement, or arrangement between Settling Defendant  
26 and any person for performance of Work on or relating to the Site, including, but  
27 not limited to, claims on account of construction delays.

28       59. No later than 15 days before commencing any on-Site Work, Settling

1 Defendant shall send to DOI a statement of self-insurance, following the form  
2 attached hereto as Appendix E, naming the United States as an additional insured  
3 with respect to all liability arising out of all activities performed by or on behalf of  
4 Settling Defendant pursuant to this Consent Decree and providing for commercial  
5 general liability insurance coverage with limits of \$5,000,000, for any one  
6 occurrence, and automobile liability insurance coverage with limits of \$1,000,000,  
7 combined single limit. The scope of the United States' coverage under PG&E's  
8 self insurance program, and the process for insurance claims submission and  
9 dispute resolution shall be specified in an Insurance Coverage and Claims Process  
10 Agreement between the Settling Defendant and the United States, attached hereto  
11 as Appendix F. In addition, for the duration of this Consent Decree, Settling  
12 Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy,  
13 all applicable laws and regulations regarding the provision of worker's  
14 compensation insurance for all persons performing the Work on behalf of Settling  
15 Defendant in furtherance of this Consent Decree. Prior to commencement of the  
16 Work under this Consent Decree, Settling Defendant shall provide to DOI, for  
17 Settling Defendant's contractor or subcontractors, certificates of such insurance.  
18 Settling Defendant shall resubmit, for Settling Defendant's contractor or  
19 subcontractors, such certificates each year on the anniversary of the Effective Date.  
20 If Settling Defendant demonstrates by evidence satisfactory to DOI that any  
21 contractor or subcontractor maintains insurance equivalent to that described above,  
22 or insurance covering the same risks but in a lesser amount, then, with respect to  
23 that contractor or subcontractor, Settling Defendant need provide only that portion  
24 of the insurance described above that is not maintained by the contractor or  
25 subcontractor through Settling Defendant's letter of self-insurance.

## 26 **XVIII. FORCE MAJEURE**

27 60. "Force majeure," for purposes of this Consent Decree, is defined as  
28 any event arising from causes beyond the control of Settling Defendant, of any

1 entity controlled by Settling Defendant, or of Settling Defendant's contractors, that  
2 delays or prevents the performance of any obligation under this Consent Decree  
3 despite Settling Defendant's best efforts to fulfill the obligation. The requirement  
4 that Settling Defendant exercises "best efforts to fulfill the obligation" includes  
5 using best efforts to anticipate any potential force majeure and best efforts to  
6 address the effects of any potential force majeure (1) as it is occurring and (2)  
7 following the potential force majeure such that the delay and any adverse effects of  
8 the delay are minimized to the greatest extent possible. "Force majeure" does not  
9 include financial inability to complete the Work or a failure to achieve the  
10 Performance Standards.

11         61. If any event occurs or has occurred that may delay the performance of  
12 any obligation under this Consent Decree for which Settling Defendant intends or  
13 may intend to assert a claim of force majeure, Settling Defendant shall notify  
14 orally DOI's Project Manager or, in his or her absence, DOI's Alternate Project  
15 Manager within three working days of when Settling Defendant first knew that the  
16 event might cause a delay. Within seven days thereafter, Settling Defendant shall  
17 provide in writing to DOI an explanation and description of the reasons for the  
18 delay; the anticipated duration of the delay; all actions taken or to be taken to  
19 prevent or minimize the delay; a schedule for implementation of any measures to  
20 be taken to prevent or mitigate the delay or the effect of the delay; Settling  
21 Defendant's rationale for attributing such delay to a force majeure; and a statement  
22 as to whether, in the opinion of Settling Defendant, such event may cause or  
23 contribute to an endangerment to public health or welfare, or the environment.  
24 Settling Defendant shall include with any notice all available documentation  
25 supporting their claim that the delay was attributable to a force majeure. Settling  
26 Defendant shall be deemed to know of any circumstance of which Settling  
27 Defendant, any entity controlled by Settling Defendant, or Settling Defendant's  
28 contractors knew or should have known. Failure to comply with the above

1 requirements regarding an event shall preclude Settling Defendant from asserting  
2 any claim of force majeure regarding that event, provided, however, that if DOI,  
3 despite the late notice, is able to assess to its satisfaction whether the event is a  
4 force majeure under Paragraph 60 and whether Settling Defendant has exercised its  
5 best efforts under Paragraph 60, DOI may, in its unreviewable discretion, excuse in  
6 writing Settling Defendant's failure to submit timely notices under this Paragraph.

7       62. If DOI agrees that the delay or anticipated delay is attributable to a  
8 force majeure, the time for performance of the obligations under this Consent  
9 Decree that are affected by the force majeure will be extended by DOI for such  
10 time as is necessary to complete those obligations. An extension of the time for  
11 performance of the obligations affected by the force majeure shall not, of itself,  
12 extend the time for performance of any other obligation. If DOI does not agree  
13 that the delay or anticipated delay has been or will be caused by a force majeure,  
14 DOI will notify Settling Defendant in writing of its decision. If DOI agrees that  
15 the delay is attributable to a force majeure, DOI will notify Settling Defendant in  
16 writing of the length of the extension, if any, for performance of the obligations  
17 affected by the force majeure.

18       63. If Settling Defendant elects to invoke the dispute resolution  
19 procedures set forth in Section XIX (Dispute Resolution), it shall do so no later  
20 than 15 days after receipt of DOI's notice. In any such proceeding, Settling  
21 Defendant shall have the burden of demonstrating by a preponderance of the  
22 evidence that the delay or anticipated delay has been or will be caused by a force  
23 majeure, that the duration of the delay or the extension sought was or will be  
24 warranted under the circumstances, that best efforts were exercised to avoid and  
25 mitigate the effects of the delay, and that Settling Defendant complied with the  
26 requirements of Paragraphs 60 and 61. If Settling Defendant carries this burden,  
27 the delay at issue shall be deemed not to be a violation by Settling Defendant of the  
28 affected obligation of this Consent Decree identified to DOI and the Court.

## **XIX. DISPUTE RESOLUTION**

64. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between the Parties regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

65. Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, except as modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute.

a. In the event that the parties cannot resolve a dispute by informal negotiations, then the position advanced by DOI shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Settling Defendant and DOI jointly determine to proceed with Alternative Dispute Resolution, with such mediation to be conducted pursuant to the International Institute for Conflict Prevention & Resolution Mediation Procedures, or the Mediation Process Agreement (attached hereto as Appendix G), as may be modified by agreement of the parties. Within 30 days of the parties' joint determination to proceed with Alternative Dispute Resolution, the parties shall select the mediator. If Alternative Dispute Resolution commences, such mediation shall be non-binding and shall not last longer than 30 days from the selection of the mediator unless extended by written agreement by both parties. If the dispute is resolved at the end of the mediation period, DOI shall provide a written statement of the joint resolution of the dispute to the Settling Defendant.

b. If agreement is not reached under informal negotiations and

1 DOI's position becomes binding, or if DOI provides a written statement of its final  
2 position after mediation, Settling Defendant shall begin to implement the activities  
3 required by the DOI decision no later than 30 days after the completion of the  
4 informal negotiations or after receipt of DOI's final position, unless formal dispute  
5 resolution is invoked. Except as specifically provided in this Section XIX, a  
6 dispute among the Parties under this Section shall not be cause for the delay of any  
7 work.

8       66.   Statements of Position.

9           a.     In the event that the parties cannot resolve a dispute by informal  
10 negotiations or mediation under the preceding Paragraphs, then the position  
11 advanced by DOI shall be considered binding unless, within 30 days after the  
12 conclusion of the informal negotiation period or the Alternative Dispute Resolution  
13 period, Settling Defendant invokes the formal dispute resolution procedures of this  
14 Section by serving on the United States a written Statement of Position on the  
15 matter in dispute, including, but not limited to, any factual data, analysis or opinion  
16 supporting that position and any supporting documentation relied upon by Settling  
17 Defendant. The Statement of Position shall specify Settling Defendant's position  
18 as to whether formal dispute resolution should proceed under Paragraph 67 or  
19 Paragraph 68.

20           b.     Within 15 days after receipt of Settling Defendant's Statement  
21 of Position, DOI will serve on Settling Defendant its Statement of Position,  
22 including, but not limited to, any factual data, analysis, or opinion supporting that  
23 position and all supporting documentation relied upon by DOI. DOI's Statement  
24 of Position shall include a statement as to whether formal dispute resolution should  
25 proceed under Paragraph 67 or 68. Within 15 days after receipt of DOI's  
26 Statement of Position, Settling Defendant may submit a reply.

27           c.     If there is disagreement between DOI and Settling Defendant as  
28 to whether dispute resolution should proceed under Paragraph 67 or 68, the parties

1 to the dispute shall follow the procedures set forth in the paragraph determined by  
2 DOI to be applicable. However, if Settling Defendant ultimately appeals to the  
3 Court to resolve the dispute, the Court shall determine which paragraph is  
4 applicable in accordance with the standards of applicability set forth in Paragraphs  
5 67 and 68.

6       67. Record Review. Formal dispute resolution for disputes pertaining to  
7 the selection or adequacy of any response action and all other disputes that are  
8 accorded review on the administrative record under applicable principles of  
9 administrative law shall be conducted pursuant to the procedures set forth in this  
10 Paragraph. For purposes of this Paragraph, the adequacy of any response action  
11 includes, without limitation, the adequacy or appropriateness of plans, procedures  
12 to implement plans, or any other items requiring approval by DOI under this  
13 Consent Decree, and the adequacy of the performance of response actions taken  
14 pursuant to this Consent Decree. Nothing in this Consent Decree shall be  
15 construed to allow any dispute by Settling Defendant regarding the validity of the  
16 ROD's provisions.

17           a. An administrative record of the dispute shall be maintained by  
18 DOI and shall contain all statements of position, including supporting  
19 documentation, submitted pursuant to this Section. Where appropriate, DOI may  
20 allow submission of supplemental statements of position by the parties to the  
21 dispute.

22           b. The Director, Office of Environmental Policy and Compliance  
23 ("OEPC"), DOI, will issue a final administrative decision resolving the dispute  
24 based on the administrative record described in Paragraph 67.a. This decision shall  
25 be binding upon Settling Defendant, subject only to the right to seek judicial  
26 review pursuant to Paragraphs 67.c and 67.d.

27           c. Any administrative decision made by DOI pursuant to  
28 Paragraph 67.b. shall be reviewable by this Court, provided that a motion for



1 judicial review of the decision is filed by Settling Defendant with the Court and  
2 served on all Parties within 30 days of receipt of DOI's decision. The motion shall  
3 include a description of the matter in dispute, the efforts made by the parties to  
4 resolve it, the relief requested, and the schedule, if any, within which the dispute  
5 must be resolved to ensure orderly implementation of this Consent Decree. The  
6 United States may file a response to Settling Defendant's motion. Settling  
7 Defendant may file a reply after receipt of the United States' response, as currently  
8 authorized by the local rules of the Court.

9 d. In proceedings on any dispute governed by this Paragraph,  
10 Settling Defendant shall have the burden of demonstrating that the decision of the  
11 OEPC Director is arbitrary and capricious or otherwise not in accordance with law.  
12 Judicial review of DOI's decision shall be on the administrative record compiled  
13 pursuant to Paragraph 67.a.

14 68. Formal dispute resolution for disputes that neither pertain to the  
15 selection or adequacy of any response action nor are otherwise accorded review on  
16 the administrative record under applicable principles of administrative law, shall be  
17 governed by this Paragraph.

18 a. Following receipt of Settling Defendant's Statement of Position  
19 submitted pursuant to Paragraph 66, the OEPC Director, DOI, will issue a final  
20 decision resolving the dispute. The Director's decision shall be binding on Settling  
21 Defendant unless, within 20 days of receipt of the decision, Settling Defendant  
22 files with the Court and serves on the parties a motion for judicial review of the  
23 decision setting forth the matter in dispute, the efforts made by the parties to  
24 resolve it, the relief requested, and the schedule, if any, within which the dispute  
25 must be resolved to ensure orderly implementation of the Consent Decree. The  
26 United States may file a response to Settling Defendant's motion.

27 b. Notwithstanding Paragraph L (CERCLA Section 113(j) Record  
28 Review of ROD and Work) of Section I (Background), judicial review of any

dispute governed by this Paragraph shall be governed by applicable principles of law.

69. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless DOI or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, except as provided in Paragraphs 71(e) and (f), but payment shall be stayed pending resolution of the dispute as provided in Paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

## XX. STIPULATED PENALTIES

70. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraph 71 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure), or as otherwise provided herein. "Compliance" by Settling Defendant shall include completion of all payments and activities required under this Consent Decree, or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans, reports, or other deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

**71. Stipulated Penalty Amounts.**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 71.b:

### Penalty Per Violation Per Day

### Period of Noncompliance

1	\$1,000	1st through 14th day
2	\$2,000	15th through 30th day
3	\$3,000	31st day and beyond

4	b.	<u>Compliance Milestones.</u>	<u>Days to Complete</u>
5			<u>following Notification</u>
6			<u>issued pursuant to</u>
7			<u>Paragraph 41</u>

- |    |     |                                     |                             |
|----|-----|-------------------------------------|-----------------------------|
| 8  | (1) | Final Remedial Design Work Plan     | (45 days)                   |
| 9  | (2) | Final Remedial Design               | (60 days)                   |
| 10 | (3) | Final Remedial Action Work Plan     | (60 days)                   |
| 11 | (4) | Three to Five Compliance Milestones |                             |
| 12 |     | established in Remedial Action      |                             |
| 13 |     | Work Plan Schedule                  | (Specified in RA Work Plan) |
| 14 | (5) | Construction Completion Report      | (90 days)                   |

15 c. The following stipulated penalties shall accrue per violation per  
 16 day for any noncompliance identified in 71.d.:

17	<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
18	\$500	1 <sup>st</sup> through 30 <sup>th</sup> day
19	\$1,000	31 <sup>st</sup> day and beyond

20 d. Payment of Response Costs (60 days after receipt of bill)

21 e. Stipulated penalties under Paragraphs 71(a) and (b) and 72 shall  
 22 not accrue, as provided in this Paragraph, if a court of competent jurisdiction  
 23 orders Settling Defendant not to perform activities that are also required by the  
 24 Selected Remedy at the Site. Settling Defendant shall notify DOI of such an order  
 25 within 5 days of Settling Defendant's receipt of the order. If DOI agrees with  
 26 Settling Defendant that the order prohibits Settling Defendant from performing  
 27 activities required by the Selected Remedy, the Parties shall expeditiously seek  
 28

1 relief from this Court, or take such other action as the Parties, individually or  
2 collectively, deem appropriate. In the event that DOI disagrees with Settling  
3 Defendant's interpretation of such order, DOI will so inform Settling Defendant in  
4 writing. In the event Settling Defendant disputes DOI's determination, such  
5 dispute shall be initiated and resolved in accordance with Paragraph 68 of this  
6 Consent Decree. Notwithstanding Paragraph 73, stipulated penalties related to  
7 matters directly affected by such a dispute shall not begin to accrue until the  
8 completion of the dispute resolution process under Paragraph 68, and the stipulated  
9 penalties shall not be imposed if Settling Defendant's assertion of court direction  
10 not to perform activities is determined to be reasonable by the OEPC Director or  
11 the Court, as applicable.

12           f. In the event DOI and DTSC provide conflicting or inconsistent  
13 direction to Settling Defendant with regard to milestones identified in Paragraph  
14 71(b), and Settling Defendant identifies such conflicts or inconsistencies pursuant  
15 to Paragraph III.C. of the DOI/DTSC MOU, stipulated penalties associated with  
16 any such milestone shall not accrue until either (i) the completion of the dispute  
17 resolution process established in Section III of the DOI/DTSC MOU, or (ii) the  
18 completion of the dispute resolution process under Paragraph 68 of the Consent  
19 Decree if Settling Defendant invokes such provision, whichever is later.

20           72. In the event that DOI assumes performance of a portion or all of the  
21 Work pursuant to Paragraph 83 (Work Takeover), Settling Defendant shall be  
22 liable for a stipulated penalty in the amount of \$1,000,000, provided that such  
23 penalty shall accrue if DOI assumes performance of the Work, but such penalty is  
24 not payable until completion of the dispute resolution process provided for in  
25 Paragraph 68 of the Consent Decree or until a final order is issued by a court of  
26 competent jurisdiction. In any such proceeding, Settling Defendant may raise  
27 conflicting direction provided by DOI and DTSC that was not resolved and which  
28 made it impracticable for Settling Defendant to comply with both, as grounds for

1 contesting imposition of the stipulated penalty, and the stipulated penalty shall not  
2 be imposed if Settling Defendant's assertion of conflicting direction is determined  
3 to be reasonable by the OEPC Director or the court, as applicable. Stipulated  
4 penalties under this Paragraph are in addition to the remedies available under  
5 Paragraphs 49 (Funding for Work Takeover) and 83 (Work Takeover).

6       73. All penalties shall begin to accrue on the day after the complete  
7 performance is due or the day a violation occurs, and shall continue to accrue  
8 through the final day of the correction of the noncompliance or completion of the  
9 activity. However, stipulated penalties shall not accrue: (a) with respect to a  
10 deficient submission under Section XI (DOI Approval of Plans and Other  
11 Submissions), during the period, if any, beginning on the 31st day after DOI's  
12 receipt of such submission until the date that DOI notifies Settling Defendant of  
13 any deficiency; (b) with respect to a decision by the OEPC Director under  
14 Paragraph 67.b or 68.a of Section XIX (Dispute Resolution), during the period, if  
15 any, beginning on the 21st day after the date that Settling Defendant's reply to  
16 DOI's Statement of Position is received until the date that the Director issues a  
17 final decision regarding such dispute; or (c) with respect to judicial review by this  
18 Court of any dispute under Section XIX (Dispute Resolution), during the period, if  
19 any, beginning on the 31st day after the Court's receipt of the final submission  
20 regarding the dispute until the date that the Court issues a final decision regarding  
21 such dispute. Nothing in this Consent Decree shall prevent the simultaneous  
22 accrual of separate penalties for separate violations of this Consent Decree.

23       74. Following DOI's determination that Settling Defendant has failed to  
24 comply with a requirement of this Consent Decree, DOI may give Settling  
25 Defendant written notification of the same and describe the noncompliance. DOI  
26 may send Settling Defendant a written demand for the payment of the penalties.  
27 Stipulated penalties shall accrue as provided in the preceding Paragraph regardless  
28 of whether DOI has notified Settling Defendant of a violation, except with respect

1 to violations associated with submissions of a document identified in Paragraph  
2 71.b which is deficient. In such case, no stipulated penalties shall accrue until a  
3 notice of deficiency is provided by DOI.

4 75. All penalties accruing under this Section shall be due and payable to  
5 DOI within 30 days of Settling Defendant's receipt from DOI of a demand for  
6 payment of the penalties, unless Settling Defendant invokes the Dispute Resolution  
7 procedures under Section XIX (Dispute Resolution) within the 30-day period. All  
8 payments to DOI under this Section shall indicate that the payment is for stipulated  
9 penalties, and shall be made in accordance with Paragraphs 54 (Payment  
10 Instructions).

11 76. Penalties shall continue to accrue as provided in Paragraph 73 during  
12 any dispute resolution period, but need not be paid until the following:

13 a. If the dispute is resolved by agreement of the Parties or by a  
14 decision of DOI that is not appealed to this Court, accrued penalties determined to  
15 be owed shall be paid to DOI within 15 days of the agreement or the receipt of  
16 DOI's decision or order;

17 b. If the dispute is appealed to this Court and the United States  
18 prevails in whole or in part, Settling Defendant shall pay all accrued penalties  
19 determined by the Court to be owed to DOI within 60 days of receipt of the  
20 Court's decision or order, except as provided in Paragraph 76.c;

21 c. If the District Court's decision is appealed by any Party,  
22 Settling Defendant shall pay all accrued penalties determined by the District Court  
23 to be owed to DOI into an interest-bearing escrow account within 60 days of  
24 receipt of the Court's decision or order. Penalties shall be paid into this account as  
25 they continue to accrue, at least every 60 days. Within 15 days of receipt of the  
26 final appellate court decision, the escrow agent shall pay the balance of the account  
27 to DOI or to Settling Defendant to the extent that they prevail.

28 77. If Settling Defendant fails to pay stipulated penalties when due,

1 Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows:  
2 (a) if Settling Defendant has timely invoked dispute resolution such that the  
3 obligation to pay stipulated penalties has been stayed pending the outcome of  
4 dispute resolution, Interest shall accrue from the date stipulated penalties are due  
5 pursuant to Paragraph 76 until the date of payment; and (b) if Settling Defendant  
6 fails to timely invoke dispute resolution, Interest shall accrue from the date of  
7 demand under Paragraph 75 until the date of payment. If Settling Defendant fails  
8 to pay stipulated penalties and Interest when due, the United States may institute  
9 proceedings to collect the penalties and Interest.

10 78. The payment of penalties and Interest, if any, shall not alter in any  
11 way Settling Defendant's obligation to complete the performance of the Work  
12 required under this Consent Decree.

13 79. Nothing in this Consent Decree shall be construed as prohibiting,  
14 altering, or in any way limiting the ability of the United States to seek any other  
15 remedies or sanctions available by virtue of Settling Defendant's violation of this  
16 Consent Decree or of the statutes and regulations upon which it is based, including,  
17 but not limited to, penalties pursuant to Section 122(I) of CERCLA, 42 U.S.C.  
18 § 9622(I), provided, however, that the United States shall not seek civil penalties  
19 pursuant to Section 122(I) of CERCLA for any violation for which a stipulated  
20 penalty is collected pursuant to this Consent Decree.

21 80. Notwithstanding any other provision of this Section, the United States  
22 may, in its unreviewable discretion, waive any portion of stipulated penalties that  
23 have accrued pursuant to this Consent Decree.

## 24 **XXI. COVENANTS BY FEDERAL AGENCIES**

25 81. Covenants for Settling Defendant by the Federal Agencies. In  
26 consideration of the actions that will be performed and the payments that will be  
27 made by Settling Defendant under this Consent Decree, and except as specifically  
28 provided in Paragraph 82 of this Section, the Federal Agencies covenant not to sue

1 or to take administrative action against Settling Defendant pursuant to Sections 106  
2 and 107(a) of CERCLA for the Work and Response Costs. These covenants shall  
3 take effect on the Effective Date. These covenants are conditioned upon the  
4 satisfactory performance by Settling Defendant of its obligations under this  
5 Consent Decree. These covenants extend only to Settling Defendant and do not  
6 extend to any other person.

7 82. General Reservations of Rights. The United States reserves, and this  
8 Consent Decree is without prejudice to, all rights against Settling Defendant with  
9 respect to all matters not expressly included within Plaintiff's covenant.

10 Notwithstanding any other provision of this Consent Decree, the United States  
11 reserves all rights against Settling Defendant with respect to:

12 a. claims based on a failure by Settling Defendant to meet a  
13 requirement of this Consent Decree;

14 b. liability arising from the past, present, or future disposal,  
15 release, or threat of release of Waste Material outside of the Site;

16 c. liability based on the ownership or operation of the Site or any  
17 portion thereof by Settling Defendant when such ownership or operation  
18 commences after signature of this Consent Decree;

19 d. liability based on Settling Defendant's transportation,  
20 treatment, storage, or disposal, or the arrangement for the transportation, treatment,  
21 storage, or disposal of Waste Material at or in connection with the Site, other than  
22 as provided in the ROD, the Work, or otherwise ordered by DOI after signature of  
23 this Consent Decree;

24 e. liability for damages for injury to, destruction of, or loss of  
25 natural resources, and for the costs of any natural resource damage assessments;

26 f. criminal liability;

27 g. liability for violations of federal or state law which occur  
28 during or after implementation of the Work;



1           h.     liability, prior to achievement of Performance Standards in  
2 accordance with Paragraph 14, for additional response actions that DOI determines  
3 are necessary to achieve and maintain Performance Standards or to carry out and  
4 maintain the effectiveness of the remedy set forth in the ROD, but that cannot be  
5 required pursuant to Paragraph 15 (Modification of SOW or Related Work Plans);

6           i.     liability for additional operable units at the Site or the final  
7 response action;

8           j.     liability for costs that the United States will incur regarding the  
9 Site but which are not within the definition of Response Costs;

10          k.     liability for costs incurred or to be incurred by United States'  
11 agencies, other than the Federal Agencies, regarding the Site.

12       83.   Work Takeover.

13          a.     In the event DOI determines that Settling Defendant (1) has  
14 ceased implementation of any portion of the Work, or (2) is seriously or repeatedly  
15 deficient or late in its performance of the Work, or (3) is implementing the Work in  
16 a manner that may cause an endangerment to human health or the environment,  
17 DOI may issue a written notice ("Work Takeover Notice") to Settling Defendant.  
18 Any Work Takeover Notice issued by DOI will specify the grounds upon which  
19 such notice was issued and will provide Settling Defendant a period of ten days  
20 within which to remedy the circumstances giving rise to DOI's issuance of such  
21 notice. DOI shall coordinate with DTSC, as specified in the DOI/DTSC MOU,  
22 prior to any Work Takeover.

23          b.     If, after expiration of the ten-day notice period specified in  
24 Paragraph 83.a, Settling Defendant has not remedied to DOI's satisfaction the  
25 circumstances giving rise to DOI's issuance of the relevant Work Takeover Notice,  
26 DOI may at any time thereafter assume the performance of all or any portion(s) of  
27 the Work as DOI deems necessary ("Work Takeover"). DOI will notify Settling  
28 Defendant in writing (which writing may be electronic) if DOI determines that

1 implementation of a Work Takeover is warranted under this Paragraph 83.b.

2 Funding of Work Takeover costs is addressed under Paragraph 49.

3           c.       Settling Defendant may invoke the procedures set forth in  
4 Paragraph 67 (Record Review), to dispute DOI's implementation of a Work  
5 Takeover under Paragraph 83.b. However, notwithstanding Settling Defendants'  
6 invocation of such dispute resolution procedures, and during the pendency of any  
7 such dispute, DOI may in its sole discretion commence and continue a Work  
8 Takeover under Paragraph 83.b until the earlier of (1) the date that Settling  
9 Defendant remedies, to DOI's satisfaction, the circumstances giving rise to DOI's  
10 issuance of the relevant Work Takeover Notice, or (2) the date that a final decision  
11 is rendered in accordance with Paragraph 67 (Record Review) requiring DOI to  
12 terminate such Work Takeover.

13       84.   Notwithstanding any other provision of this Consent Decree, the  
14 United States retains all authority and reserves all rights to take any and all  
15 response actions authorized by law.

## 16                   **XXII. COVENANTS BY SETTLING DEFENDANT**

17       85.   Covenant Not to Sue by Settling Defendant. Subject to the  
18 reservations in Paragraph 87, Settling Defendant covenants not to sue and agrees  
19 not to assert any claims or causes of action against the United States with respect to  
20 the Work, past response actions regarding the Site, Response Costs, and this  
21 Consent Decree, including, but not limited to:

22           a.       any direct or indirect claim for reimbursement from the  
23 Hazardous Substance Superfund (established pursuant to the Internal Revenue  
24 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113  
25 or any other provision of law;

26           b.       any claims against the United States, including any department,  
27 agency or instrumentality of the United States under CERCLA Sections 107 or  
28 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work,

1 past response actions or response costs regarding the Site, Response Costs, and this  
2 Consent Decree; or

3 c. any claims arising out of response actions at or in connection  
4 with the Site, including any claim under the United States Constitution, the Tucker  
5 Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as  
6 amended, or at common law.

7 86. Except as provided in Paragraph 93 (Res Judicata and Other  
8 Defenses), the covenants in this Section shall not apply if the United States brings  
9 a cause of action or issues an order pursuant to any of the reservations in Section  
10 XXI (Covenants by Plaintiffs), other than in Paragraphs 82.a (claims for failure to  
11 meet a requirement of the Decree), 82.f (criminal liability), and 82.g (violations of  
12 federal/state law during or after implementation of the Work), but only to the  
13 extent that Settling Defendant's claims arise from the same response action,  
14 response costs, or damages that the United States is seeking pursuant to the  
15 applicable reservation.

16 87. Settling Defendant reserves, and this Consent Decree is without  
17 prejudice to, claims against the United States, subject to the provisions of Chapter  
18 171 of Title 28 of the United States Code, and brought pursuant to any statute other  
19 than CERCLA or RCRA and for which the waiver of sovereign immunity is found  
20 in a statute other than CERCLA or RCRA, for money damages for injury or loss of  
21 property or personal injury or death caused by the negligent or wrongful act or  
22 omission of any employee of the United States, as that term is defined in 28 U.S.C.  
23 § 2671, while acting within the scope of his or her office or employment under  
24 circumstances where the United States, if a private person, would be liable to the  
25 claimant in accordance with the law of the place where the act or omission  
26 occurred. However, the foregoing shall not include any claim based on DOI's  
27 selection of response actions, or the oversight or approval of Settling Defendant's  
28 plans, reports, other deliverables or activities.

1        88. Nothing in this Consent Decree shall be deemed to constitute  
2 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42  
3 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

4                    **XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION**

5        89. Nothing in this Consent Decree shall be construed to create any rights  
6 in, or grant any cause of action to, any person not a Party to this Consent Decree.  
7 Each of the Parties expressly reserves any and all rights (including, but not limited  
8 to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims,  
9 demands, and causes of action which each Party may have with respect to any  
10 matter, transaction, or occurrence relating in any way to the Site against any person  
11 not a Party hereto. Nothing in this Consent Decree diminishes the right of the  
12 United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C.  
13 § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or  
14 response action and to enter into settlements that give rise to contribution  
15 protection pursuant to Section 113(f)(2).

16        90. The Parties agree, and by entering this Consent Decree this Court  
17 finds, that this Consent Decree constitutes a judicially-approved settlement for  
18 purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that  
19 Settling Defendant is entitled, as of the Effective Date, to protection from  
20 contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as  
21 may be otherwise provided by law, for “matters addressed” in this Consent Decree.  
22 The “matters addressed” in this Consent Decree are the Work and Response Costs.

23        91. Settling Defendant shall, with respect to any suit or claim brought by  
24 it for matters related to this Consent Decree, notify the United States in writing no  
25 later than 60 days prior to the initiation of such suit or claim.

26        92. Settling Defendant shall, with respect to any suit or claim brought  
27 against it for matters related to this Consent Decree, notify in writing the United  
28 States within ten days of service of the complaint on such Settling Defendant. In

1 addition, Settling Defendant shall notify the United States within ten days of  
2 service or receipt of any Motion for Summary Judgment and within ten days of  
3 receipt of any order from a court setting a case for trial.

4 93. Res Judicata and Other Defenses. In any subsequent administrative or  
5 judicial proceeding initiated by the United States for injunctive relief, recovery of  
6 response costs, or other appropriate relief relating to the Site, Settling Defendant  
7 shall not assert, and may not maintain, any defense or claim based upon the  
8 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-  
9 splitting, or other defenses based upon any contention that the claims raised by the  
10 United States in the subsequent proceeding were or should have been brought in  
11 the instant case; provided, however, that nothing in this Paragraph affects the  
12 enforceability of the covenants not to sue set forth in Section XXI (Covenants by  
13 Plaintiffs).

#### 14 **XXIV. ACCESS TO INFORMATION**

15 94. Settling Defendant shall provide to DOI, upon request, copies of all  
16 non-identical final (or last draft where no final document is available) records,  
17 reports, documents, and other information (including records, reports, documents,  
18 and other information in electronic form) relating to past activities giving rise to its  
19 liability under CERCLA with respect to the Site or its performance of Work to  
20 design and implement the Selected Remedy, sampling analyses, laboratory  
21 analyses and supporting documentation, chain of custody records, manifests,  
22 trucking logs, receipts, reports, correspondence, or other documents, information,  
23 or data generated regarding the Work (hereinafter referred to as "Records") within  
24 its possession or control, or that of its contractors or agents. Settling Defendant  
25 shall also make available to DOI, for purposes of investigation, information  
26 gathering, or testimony, its employees, agents, or representatives with knowledge  
27 of relevant facts concerning the performance of the Work.

28 95. Business Confidential and Privileged Documents.

1           a.     Settling Defendant may assert business confidentiality claims  
2 covering part or all of the Records submitted to Plaintiff under this Consent Decree  
3 to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA,  
4 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be  
5 confidential by DOI will be afforded the protection specified in 40 C.F.R. Part 2,  
6 Subpart B. If no claim of confidentiality accompanies Records when they are  
7 submitted to DOI , or if DOI has notified Settling Defendant that the Records are  
8 not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R.  
9 Part 2, Subpart B, the public may be given access to such Records without further  
10 notice to Settling Defendant.

11           b.     Settling Defendant may assert that certain Records are  
12 privileged under the attorney-client privilege or any other privilege recognized by  
13 federal law. If Settling Defendant asserts such a privilege in lieu of providing  
14 Records, it shall provide Plaintiff with the following: (1) the title of the Record; (2)  
15 the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and  
16 address of the author of the Record; (4) the name and title of each addressee and  
17 recipient; (5) a description of the contents of the Record; and (6) the privilege  
18 asserted by Settling Defendant. If a claim of privilege applies only to a portion of  
19 a Record, the Record shall be provided to the United States in redacted form to  
20 mask the privileged portion only. Settling Defendant shall retain all Records that it  
21 claims to be privileged until the United States has had a reasonable opportunity to  
22 dispute the privilege claim and any such dispute has been resolved in the Settling  
23 Defendant's favor.

24           c.     No Records created or generated pursuant to the requirements  
25 of this Consent Decree shall be withheld from the United States on the grounds  
26 that they are privileged or confidential.

27           96.    No claim of confidentiality or privilege shall be made with respect to  
28 any data, including, but not limited to, all sampling, analytical, monitoring,

1 hydrogeologic, scientific, chemical, or engineering data, or any other documents or  
2 information evidencing conditions at or around the Site.

### 3 **XXV. RETENTION OF RECORDS**

4 97. Until ten years after Settling Defendant's receipt of DOI's notification  
5 pursuant to Paragraph 51.b of Section XIV (Certification of Completion), Settling  
6 Defendant shall preserve and retain all Records (including Records in electronic  
7 form) now in its possession or control or which come into its possession or control.  
8 Settling Defendant must also instruct its contractors and agents to preserve, for the  
9 same period of time specified above, all Records (including Records in electronic  
10 form) now in its possession or control or which come into its possession or control.  
11 Each of the above record retention requirements shall apply regardless of any  
12 corporate retention policy to the contrary.

13 98. At the conclusion of this record retention period, Settling Defendant  
14 shall notify the United States at least 90 days prior to the destruction of any such  
15 Records, and, upon request by the United States, Settling Defendant shall deliver  
16 any such Records to DOI. Settling Defendant may assert that certain Records are  
17 privileged under the attorney-client privilege or any other privilege recognized by  
18 federal law. If Settling Defendant asserts such a privilege, it shall provide the  
19 United States with the following: (a) the title of the Record; (b) the date of the  
20 Record; (c) the name, title, affiliation (e.g., company or firm), and address of the  
21 author of the Record; (d) the name and title of each addressee and recipient; (e) a  
22 description of the subject of the Record; and (f) the privilege asserted by Settling  
23 Defendant. If a claim of privilege applies only to a portion of a Record, the Record  
24 shall be provided to the United States in redacted form to mask the privileged  
25 portion only. Settling Defendant shall retain all Records that it claims to be  
26 privileged until the United States has had a reasonable opportunity to dispute the  
27 privilege claim and any such dispute has been resolved in the Settling Defendant's  
28 favor. However, no Records created or generated pursuant to the requirements of

1 this Consent Decree shall be withheld on the grounds that they are privileged or  
2 confidential.

3 99. Settling Defendant certifies that, to the best of its knowledge and  
4 belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or  
5 otherwise disposed of any Records (other than identical copies) relating to its  
6 potential liability regarding the Site since the earlier of notification of potential  
7 liability by the United States or the State or the filing of suit against it regarding  
8 the Site and that it has fully complied with any and all DOI requests for  
9 information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C.  
10 §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### 11 **XXVI. NOTICES AND SUBMISSIONS**

12 100. Whenever, under the terms of this Consent Decree, written notice is  
13 required to be given or a report or other document is required to be sent by one  
14 Party to another, it shall be directed to the individuals at the addresses specified  
15 below, unless those individuals or their successors give notice of a change to the  
16 other Parties in writing or unless the Parties agree in writing to an alternate method  
17 of written notice, including via electronic transmission. All notices and  
18 submissions shall be considered effective upon receipt, unless otherwise provided.  
19 Written notice as specified in this Section shall constitute complete satisfaction of  
20 any written notice requirement of the Consent Decree with respect to the United  
21 States, DOI, and Settling Defendant, respectively. Notices required to be sent to  
22 DOI, and not to the United States, under the terms of this Consent Decree should  
23 not be sent to the U.S. Department of Justice.

24  
25 As to the United States:  
26 Division

Chief, Environmental Enforcement Section  
Environment and Natural Resources

27 U.S. Department of Justice  
28 P.O. Box 7611  
Washington, D.C. 20044-7611



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Re: DJ # 90-11-3-07240/4

As to DOI:  
  
Compliance

Pamela Innis  
DOI Remedial Project Manager,  
Office of Environmental Policy and

Department of the Interior  
Denver Federal Center  
P.O. Box 25007, MS D108  
Denver, CO 80225-0007

Casey S. Padgett, Esq.  
Assistant Solicitor  
Office of the Solicitor  
1849 C Street, NW, MS 5530  
Washington, D.C. 20240

As to the Fund Manager:

Courtney Hoover  
Central Hazardous Materials Fund  
Department of the Interior  
1849 C Street, N.W., Mail Stop 2342  
Washington, D.C. 20240

As to Settling Defendant:

Yvonne Meeks  
PG&E's Project Manager  
4325 South Higuera Street  
San Luis Obispo, CA 93401

Juan M. Jayo  
PG&E Law Department  
P.O. Box 7442  
San Francisco, CA 94120

**XXVII. RETENTION OF JURISDICTION**

101. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief

1 as may be necessary or appropriate for the construction or modification of this  
2 Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve  
3 disputes in accordance with Section XIX (Dispute Resolution).

#### 4 **XXVIII. APPENDICES**

5 102. The following appendices are attached to and incorporated into this  
6 Consent Decree:

7 "Appendix A" is the ROD.

8 "Appendix B" is the description and/or map of the Site.

9 "Appendix C" is the SOW.

10 "Appendix D" is the performance guarantee.

11 "Appendix E" is the form of the Statement of Self-Insurance

12 "Appendix F" is the Insurance Coverage and Claims Process Agreement

13 "Appendix G" is the Mediation Process Agreement

#### 14 **XXIX. COMMUNITY RELATIONS**

15 103. If requested by DOI, Settling Defendant shall participate in  
16 community relations activities pursuant to the Community Involvement Plan  
17 developed by DOI. DOI will determine the appropriate role for Settling Defendant  
18 under the Plan. Settling Defendant shall also cooperate with DOI in providing  
19 information regarding the Work to the public. As requested by DOI, Settling  
20 Defendant shall participate in the preparation of such information for  
21 dissemination to the public and in public meetings which may be held or sponsored  
22 by DOI to explain activities at or relating to the Site. Costs incurred by the United  
23 States under this Section, including the costs of any technical assistance grant  
24 under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), shall be considered  
25 Response Costs that Settling Defendant shall pay pursuant to Section XVI  
26 (Payments for Response Costs).

#### 27 **XXX. MODIFICATION**

28 104. Except as provided in Paragraph 15 (Modification of SOW or Related

1 Work Plans), material modifications to this Consent Decree, including the SOW,  
2 shall be in writing, signed by the United States and Settling Defendant, and shall  
3 be effective upon approval by the Court. Except as provided in Paragraph 15  
4 (Modification of SOW or Related Work Plans), non-material modifications to this  
5 Consent Decree, including the SOW, shall be in writing and shall be effective  
6 when signed by duly authorized representatives of the United States and Settling  
7 Defendant.

8 105. Nothing in this Consent Decree shall be deemed to alter the Court's  
9 power to enforce, supervise or approve modifications to this Consent Decree.

#### 10 **XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

11 106. This Consent Decree shall be lodged with the Court for a period of not  
12 less than 30 days for public notice and comment in accordance with Section  
13 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United  
14 States reserves the right to withdraw or withhold its consent if the comments  
15 regarding the Consent Decree disclose facts or considerations which indicate that  
16 the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant  
17 consents to the entry of this Consent Decree without further notice.

18 107. If for any reason the Court should decline to approve this Consent  
19 Decree in the form presented, this agreement is voidable at the sole discretion of  
20 any Party and the terms of the agreement may not be used as evidence in any  
21 litigation between the Parties.

#### 22 **XXXII. SIGNATORIES/SERVICE**

23 108. The undersigned representative of Settling Defendant to this Consent  
24 Decree and the Assistant Attorney General for the Environment and Natural  
25 Resources Division of the Department of Justice certifies that he or she is fully  
26 authorized to enter into the terms and conditions of this Consent Decree and to  
27 execute and legally bind such Party to this document.

28 109. Settling Defendant agrees not to oppose entry of this Consent Decree

1 by this Court or to challenge any provision of this Consent Decree unless the  
2 United States has notified Settling Defendant in writing that it no longer supports  
3 entry of the Consent Decree.

4 110. Settling Defendant shall identify, on the attached signature page, the  
5 name, address and telephone number of an agent who is authorized to accept  
6 service of process by mail on behalf of that Party with respect to all matters arising  
7 under or relating to this Consent Decree. Settling Defendant agrees to accept  
8 service in that manner and to waive the formal service requirements set forth in  
9 Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of  
10 this Court, including, but not limited to, service of a summons. Settling Defendant  
11 need not file an answer to the complaint in this action unless or until the Court  
12 expressly declines to enter this Consent Decree.

13 **XXXIII. FINAL JUDGMENT**

14 111. This Consent Decree and its appendices constitute the final, complete,  
15 and exclusive agreement and understanding among the Parties regarding the  
16 settlement embodied in the Consent Decree. The Parties acknowledge that there  
17 are no representations, agreements or understandings relating to the settlement  
18 other than those expressly contained in this Consent Decree.

19 112. Upon entry of this Consent Decree by the Court, this Consent Decree  
20 shall constitute a final judgment between and among the United States and Settling  
21 Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ.  
22 P. 54 and 58.

23  
24 SO ORDERED THIS \_\_ DAY OF \_\_\_\_\_, 2012.

25  
26 \_\_\_\_\_  
27 United States District Judge  
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**FOR THE UNITED STATES OF  
AMERICA:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
**IGNACIA S. MORENO**  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

\_\_\_\_\_  
Date

\_\_\_\_\_  
**KARL J. FINGERHOOD**  
Trial Attorney,  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

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Date

LAURA BROWN  
Associate Solicitor  
United States Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Date

CASEY S. PADGETT  
Assistant Solicitor  
United States Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Date

WILLIE R. TAYLOR, Ph.D.  
Director  
Office of Environmental Policy and  
Compliance  
United States Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

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**FOR PACIFIC GAS & ELECTRIC  
COMPANY**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (print):

Title:

Address:

Agent Authorized to Accept  
Service on Behalf of Above-  
signed Party:

\_\_\_\_\_  
Name (print):

Title:

Address:

Phone:

email: